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# ACTS OF A GENERAL NATURE

REVISED AND AMENDED BY THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF WASHINGTON, DURING THE EIGHTH BIENNIAL SESSION, AND THE EXTRA SESSION, ENDING DECEMBER 7, 1881; THE CONSTITUTION OF THE UNITED STATES AND AMENDMENTS THERETO; THE ACTS OF CONGRESS APPLICABLE TO THE TERRITORY OF WASHINGTON; AND THE NATURALIZATION LAWS.

Washington Territory Laws, statutes, etc.

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# CONSTITUTION OF THE UNITED STATES.

## PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

## CHAPTER I.

### OF THE LEGISLATIVE POWER.

SECTION 1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

### OF THE HOUSE OF REPRESENTATIVES.

SEC. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant in that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

### OF THE SENATE.

SEC. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of any legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of United States.

The senate shall have sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

### MANNER OF ELECTING MEMBERS.

SEC. 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the place of chosing senators.

### CONGRESS TO ASSEMBLE ANNUALLY.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

### POWERS.

SEC. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceeding, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members, of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congess, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

### COMPENSATION, ETC., OF MEMBERS.

SEC. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person, holding any office under the United States, shall be a member of either house during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shali be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

### POWERS OF CONGRESS.

SEC. 8. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and,

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

### LIMITATION OF THE POWERS OF CONGRESS.

SEC. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince or foreign state.

### LIMITATION OF THE POWERS OF THE INDIVIDUAL STATES.

SEC. 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports, or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of treasury of the United States; and all such laws shall be subject to the revision and control of congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II.

### EXECUTIVE POWER.

SECTION 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

### MANNER OF ELECTING.

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member, or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.

[NOTE. The above paragraph annulled by amendments which prescribe mode of election.]

### TIME OF CHOOSING ELECTORS.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

### WHO ELIGIBLE.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

### WHEN THE PRESIDENT'S POWER DEVOLVES ON THE VICE PRESIDENT.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

### PRESIDENT'S COMPENSATION.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emoluments from the United States, or any of them.

### OATH.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect, and defend the constitution of the United States."

### POWERS AND DUTIES.

SEC. 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SEC. 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

### OFFICERS REMOVED.

SEC. 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

## ARTICLE III.

### OF THE JUDICIARY.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

### JURISDICTION OF SUPREME COURT.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to the law and fact, with such exceptions, and under such regulations as the congress shall make.

### OF TRIALS FOR CRIMES.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

### OF TREASON.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

No person shall be convicted of treason unless on testimony of two witnesses to the same overt act, or in confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, xcept during the life of the person attainted.

## ARTICLE IV.

### STATE ACTS.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effects thereof.

### PRIVILEGES OF CITIZENS.

SEC. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

### FUGITIVES TO BE DELIVERED UP.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

### NEW STATES.

SEC. 3. New states may be admitted by the congress into the union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

### TERRITORIAL AND OTHER PROPERTY.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or any particular state.

SEC. 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

## ARTICLE V.

### AMENDMENTS.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitntion, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

## ARTICLE VI.

### DEBTS.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

### SUPREME LAW OF THE LAND.

This constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

### OATH.—NO RELIGIOUS TEST.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII.

### RATIFICATION.

The ratification of the conventions of nine states shall be sufficient for the establishmect of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,
*President, and Deputy from Virginia.*

NEW HAMPSHIRE.
JOHN LANGDON,
NICHOLAS GILMAN,

MASSACHUSETTS.
NATHANIEL GORHAM,
RUFUS KING,

CONNECTICUT.
WILLIAM SAMUEL JOHNSON,
ROGER SHERMAN,

NEW YORK.
ALEXANDER HAMILTON

NEW JERSEY.
WILLIAM LIVINGSTON
DAVID BREARLEY,
WILLIAM PATTERSON,
JONATHAN DAYTON.

DELAWARE.
GEORGE READ,
GUNNING BEDFORD, JR
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

MARYLAND.
JAMES M'HENRY,
DANIEL OF ST. THOMAS JENIFER,
DANIEL CARROLL.

Attest,

VIRGINIA.
JOHN BLAIR,
JAMES MADISON, JR.,

NORTH CAROLINA.
WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.

PENSYLVANIA.
BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUVERNEUR MORRIS.

SOUTH CAROLINA.
JOHN RUTLEDGE,
CHARLES COTTESWORTH PICKNEY,
CHARLES PICKNEY,
PIERCE BUTLER,

GEORGIA.
WILLIAM FEW,
ABRAHAM BALDWIN,
WILLIAM JACKSON, Secretary

# AMENDMENTS

TO THE

# CONSTITUTION OF THE UNITED STATES.

## ARTICLE I.

### FREE EXERCISE OF RELIGION.

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

## ARTICLE II.

### RIGHT TO BEAR ARMS.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

## ARTICLE III.

### NO SOLDIER TO BE QUARTERED, ETC.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

## ARTICLE IV.

### UNREASONABLE SEARCHES PROHIBITED.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## ARTICLE V.

### CRIMINAL PROCEEDINGS.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## ARTICLE VI.

### MODE OF TRIAL.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of council for his defence.

## ARTICLE VII.

### RIGHT OF TRIAL BY JURY.

In suits at common law, where the value in controversy shall exceed twelve dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

## ARTICLE VIII.

### BAIL, FINES, ETC.

Excessive bail shall not be required, no excessive fines imposed, nor cruel and unusual punishments inflicted.

## ARTICLE IX.

### RIGHTS NOT ENUMERATED.

The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

## ARTICLE X.

### POWERS RESERVED.

The powers not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

## ARTICLE XI.

### LIMITATION OF JUDICIAL POWERS.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

[This amendment was proposed at the second session of the third congress. It is printed in the Laws of the United States, 1st vol., p, 73, as Article 11.]

## ARTICLE XII.

### ELECTION OF PRESIDENT.

The electors shall meet in their respective states and vote by ballot for president and vice president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of senate shall, in the presence of the senate and house of representatives, open all certificates, and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such a number be a majority of the whole number of electors appointed; and if no such person have a majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall be president, as in case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no such person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be nececsary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

[The foregoing article proposed at the first session of the eighth congress, is printed in the Laws of the United States, as Article 12.]

NOTE.—Another amendment was proposed as Article xiii, at the second session of the eleventh congress, but, not having been ratified by a sufficient number of states, has not yet become valid as a part of the constitution of the United States. It is erroneously given as a part of the constitution, in page 74, vol. 1, Laws of the United States.

## ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

## ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election, for the choice of electors for president and vice of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which such number of male citizens shall bear to the whole number of male citizens, twenty-one years of age, in such state.

SEC. 3. No person shall be a senator or representative in congress, or elector of president or vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof; but congress may, by a vote of two-thirds of each house, remove such a disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned; but neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SEC. 5. The congress shall have power to enforce by appropriate legislation the provisions of this article.

## ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote, shall not be denied or abridged by the United States, or by any state on account of race, color or previous condition of servitude.

SEC. 2. The congress shall have power to enforce this article by appropriate legislation.

# ORGANIC ACT,

OR SECTIONS OF CHAPTERS ONE AND TWO, TITLE TWENTY-THREE, OF THE
REVISED STATUTES, CONTAINING PROVISIONS COMMON TO ALL THE
TERRITORIES, OR TO WASHINGTON TERRITORY, ALONE, AND
OTHER ACTS OF CONGRESS APPLICABLE TO THE
TERRITORY INCLUDING TITLE XXX, U. S.
REVISED STATUTES, NATURALIZATION.

## CHAPTER I.

### PROVISIONS COMMON TO ALL THE TERRITORIES.

SEC. 1839. Nothing in this Title shall be construed to impair the rights of person or property pertaining to the Indians in any territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any territory now or hereafter organized until such tribe signifies its assent to the president to be embraced within a particular territory.

SEC. 1840. Nor shall any thing in this Title be construed to affect the authority of the United States to make any regulations respecting the Indians of any territory, their lands, property, or rights, by treaty, law, or otherwise, in the same manner as might be made if no temporary government existed, or is hereafter established, in any such territory.

SEC. 1841. The executive power of each territory shall be vested in a governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. He shall reside in the territory for which he is appointed, and shall be commander-in-chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offences against the laws of the terrritory for which he is appointed, and respites for offences against the laws of the United States, till the decision of the president can be made known thereon. He shall commission all officers who are appointed under the laws of such territory, and shall take care that the laws thereof be faithfully executed.

SEC. 1842. Every bill which has passed the legislative assembly of any territory shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it originated, and that house shall enter the objections at large on its journal, and proceed to reconsider it.

If, after such reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house. If any bill is not returned by the governor within three days, Sundays excluded, except in Washington and Wyoming, where the term is five days, Sundays excluded, after it has been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly, by adjournment sine die, prevent its return, in which case it shall not be a law.

SEC. 1843. There shall be appointed a secretary for each territory, who shall reside within the Territory for which he is appointed, and shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. In case of the death, removal, resignation, or absence of the govenor from the territory, the secretary shall execute all the powers and perform all the duties of governor during such vacancy or absence or until another governor is appointed and qualified.

SEC. 1844. The secretary shall record and preserve all the laws and proceedings of the legislative assembly, and all the acts and proceedings of the governor in the executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session thereof, to the president, and two copies of the laws, within like time, to the president of the senate, and to the speaker of the house of representatives, for the use of congress. He shall transmit one copy of the executive proceedings and official correspondence semi-annually, on the first day of January and July in each year, to the president. He shall prepare the acts passed by the legislative assembly for publication, and furnish a copy thereof to the public printer of the territory, within ten days after the passage of each act.

SEC. 1845. From and after the first day of July, eighteen hundred and seventy three, the annual salaries of the governors of the several territories shall be three thousand five hundred dollars, and the salaries of the secretaries shall be two thousand five hundred dollars each.

SEC. 1846. The legislative power in each territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The members of both branches of the legislative assembly shall have the qualifications of voters as herein prescribed. They shall be chosen for the term of two years and the sessions of the respective legislative assemblies shall be biennial. Each legislative assembly shall fix by law the day of the commencement of its regular sessions. The members of the council and of the house of reprepresentatives shall reside in the district or county for which they are respectively elected. * * *

See U. S. Statutes at Large, 45th Congress, 2d Session, chapter 329, p. 193. Approved June 19, 1878.

"From and after the adjournment of the next session of the several territorial legislatures the council of each of the territories of the United States shall not exceed twelve members and the house of representatives of each shall not exceed twenty-four members, and the members of each branch of the said several legislatures shall receive a compensation of four dollars per day each during the sessions provided by law, and shall receive such mileage as the law provides; and the president of the council and the speaker of the house of representatives shall each receive six dollars per day for the same time. And the several legislatures at their next sessions are directed to divide their respective territories into as many council and representative districts as they desire, which districts shall be as nearly equal as practicable, taking into consideration population, except "Indians not taxed:" *Provided*, The number of council districts shall not exceed twelve, and the representative districts shall not exceed twenty-four in any one of said territories, and all parts of sections eighteen hundred and forty-seven, eighteen hundred and forty-nine, eighteen hundred and fifty-three, and nineteen hundred and twenty-two, of the Revised Statutes of the United States, in conflict with the provisions herein are repealed."

"That the subordinate officers of each branch of said territorial legislatures shall consist of one chief clerk, who shall receive a compensation of six dollars per day; one enrolling and engrossing clerk, at five dollars per day; sergeant-at-arms and doorkeeper, at five dollars per day; one messenger and watchman, at four dollars per day each; and one chaplain, at one dollar and fifty cents per day. Said sums shall be paid only during the sessions of said legislatures; and no greater number of officers or charges per diem shall be paid or allowed by the United States to any territory. And section eighteen hundred and sixty-one of the Revised Statutes is hereby repealed, and this substituted in lieu thereof: *Provided*, That for the performance of all official duties imposed by the territorial legislatures, and not provided for in the organic act, the secretaries of the territories respectively shall be allowed such fees as may be fixed by the territorial legislatures. And in no case shall the expenditure for public printing in any of the territories exceed the sum of two thousand five hundred dollars for any one year."

SEC. 1848. After such first election, however, the time, place, and manner of holding elections by the people in any newly-created territory, as well as of holding all such elections in territories now organized, shall be prescribed by the laws of each territory.

[Section 1849 repealed. See laws U. S. 1878, page 193. See section 1846, *ante*.]

SEC. 1850. All laws passed by the legislative assembly and governor of any territory except in the territories of Colorado, Dakota, Idaho, Montana, and Wyoming, shall be submitted to congress, and if disapproved, shall be null and no effect.

SEC. 1851. The legislative power of every territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

SEC. 1852. The sessions of the legislative assemblies of the several territories of the United States shall be limited to sixty days' duration. [Approved December 23, 1880.]

[Section 1853 repealed. See laws U. S. 1878, page 193. See *ante* sec. 1846.]

SEC. 1854. No member of the legislative assembly of any territory now organized shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly in any territory hereafter organized; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of any territory. The exception of postmasters shall not apply in the territory of Washington.

SEC. 1855. No law of any territorial legislature shall be made or enforced by which the governor or secretary of a territory, or the members or officers of any territorial legislature are paid any compensation other than that provided by the laws of the United States.

SEC. 1856. Justices of the peace and all general officers of the militia in the several territories shall be elected by the people in such manner as the respective legislatures may provide by law. [See *addendum*, Sec. 1857.]

SEC. 1857. All township, district, and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each territory; and all other officers not herein otherwise provided for, the governor shall nominate, and by and with the advice and consent of the legislative council of each territory, shall appoint; but, in the first instance, where a new territory is hereafter created by congress, the governor alone may appoint all the officers referred to in this and the preceding section and assign them to their respective townships, districts, and counties; and the officers so appointed shall hold their offices until the end of the first session of the legislative assembly.

An Act relating to justices of the peace in the territories. Approved April 16, 1880.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That when from any cause there shall be a vacancy in the office of justice of the peace in any of the territories of the United States, it shall be lawful to fill such vacancy by appointment or election, in such manner as has been or may be provided by the governor and legislative assembly of such territory; *Provided*, That such appointee, or person elected to fill such vacancy, shall hold office only until his successor shall be regularly elected and qualified as provided by law.

SEC. 1858. In any of the territories, whenever a vacancy happens from resignation or death, during the recess of the legislative council, in any office which under the organic act of any territory, is to be filled by appointment of the governor, by and with the advice and consent of the council, the governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislative council.

SEC. 1859. Every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens in any territory hereafter organized, and who are actual residents of such territory at the time of the organization thereof, shall be entitled to vote at the first election in such territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next session.

SEC. 1860. At all subsequent elections, however, in any territory hereafter organized by congress, as well as at all elections in territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the legislative assembly of each territory; subject, nevertheless, to the following restrictions on the power of the legislative assembly, namely:

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the constitution and government of the United States.

Second. There shall be no denial of the elective franchise or of holding office to a citizen on account of race, color, or previous condition of servitude.

Third. No officer, soldier, seaman, mariner, or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote in any territory, by reason of being on service therein, unless such territory is and has been for the period of six months, his permanent domicile.

Fourth. No person belonging to the army or navy shall be elected to or hold any civil office or appointment in any territory.

[Section 1861 repealed. See U. S. laws, 1878, page 192.]

SEC. 1862. Every territory shall have the right to send a delegate to the house of representatives of the United States, to serve during each congress, who shall be elected by the voters in the territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such delegate shall have a seat in the house of representatives, with the right of debating, but not of voting.

SEC. 1863. The first election of a delegate in any territory for which a temporary government is hereafter provided by congress, shall be held at the time and places and in the manner the governor of such territory may direct, after at least sixty days' notice, to be given by proclamation; but at all subsequent elections therein, as well as at all elections for a delegate in organized territories, such time, places, and manner of holding the election shall be prescribed by the law of each territory.

SEC. 1864. The supreme court of every territory shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of government of the territory for which they are respectively appointed.

SEC. 1865. Every territory shall be divided into three judicial districts; and a district court shall be held in each district of the territory by one of the justices of the supreme court, at such time and place as may be prescribed by law; and each judge, after assignment, shall reside in the district to which he is assigned.

SEC. 1866. The jurisdiction, both appellate and original, of the courts provided for in section nineteen hundred and seven and nineteen hundred and eight, shall be limited by law.

SEC. 1867. No justices of the peace in any territory shall have jurisdiction of any case in which the title to land, or the boundary thereof, in anywise comes in question.

SEC. 1868. The supreme court and the district courts, respectively, of every territory, shall possess chancery as well as common law jurisdiction.

[See page 33, 43d congress, 1st session.]

An Act concerning the practice in territorial courts, and appeals therefrom.

WHEREAS, by the organic acts establishing several of the territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts have been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said territories which have authorized a mingling of said jurisdictions in the same proceeding, or a uniform course of proceeding in all cases legal and equitable, are repugnant to the said organic acts respectively: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That it shall not be necessary in any of the courts of the several territories of the United States to exercise separately the common law and chancery jurisdictions vested in said courts; and that the several codes and rules of practice adopted in said territories respectively, in so far as they authorize a mingling of said jurisdictions or a uniform course of proceeding in all other cases whether legal or equitable, be confirmed; and that all proceedings heretofore had or taken in said courts in conformity with said respective codes and rules of practice, so far as relates to the form and mode of proceeding, be, and the same are hereby validated and confirmed: *Provided*, That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law.

SEC. 2. That the appellate jurisdiction of the supreme court of the United States over the judgments and decrees of said territorial courts in cases of trial by jury shall be exercised by writ of error, and in all cases by appeal according to such rules and regulations as to form and modes of proceeding as the said supreme court have prescribed or may hereafter prescribe: *Provided*, That an appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the supreme court together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said supreme court, heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal: *And provided further*, That the appellate court may make an order in any case heretofore appealed. which may be necessary to save the rights of the parties; and that this act shall not apply to cases now pending in the supreme court of the United States where the record has already been filed.

[Approved April 7, 1874.]

SEC. 1869. Writs of error, bills of exception, and appeals shall be allowed, in all cases, from the final decisions of the district courts to the supreme court of all the territories, respectively, under such regulation as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in that court.

SEC. 1870. The supreme court of each territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed.

SEC. 1871. Each judge of the supreme court of the respective territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such district clerk shall be entitled to a compensation from the United States.

SEC. 1872. Every district clerk shall also be the register in chancery, and shall reside and keep his office at the place where the court is held.

SEC. 1873. Temporarily, and until otherwise provided by law, the governor of every territory which may be hereafter established shall define by proclamation, the judicial districts of such territory, and assign the judges appointed for such territory to the several districts, as well as fix the times and places for holding courts in the respective counties or subdivisions of each judicial district.

SEC. 1874. The judges of the supreme court of each territory are authorized to hold court within their respective districts, in the counties wherein, by the laws of the territory, courts have been or may be established, for the purpose of hearing and determining all matters and causes, except those in which the United States is a party; but the expense of holding such courts shall be paid by the territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith.

SEC. 1875. There shall be appointed in each territory a person learned in the law, to act as attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the president.

SEC. 1876. There shall be appointed a marshal for each territory. He shall execute all process issuing from the territorial courts when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties, imposed by law on the marshals for the several judicial districts of the United States. He shall hold his office for four years and until his successor is appointed and qualified, unless sooner removed by the president.

SEC. 1877. The governor, secretary, chief justice, and associate justices, attorney, and marshal of every territory shall be nominated and, by and with the advice and consent of the senate, appointed by the president.

SEC. 1878. The governor and secretary for each territory shall, before they act as such, respectively take an oath before the district judge, or some justice of the peace in the limits of the territory for which they are appointed, duly authorized to administer oaths by the laws in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers appointed for any territory, before they act as such, shall take a like oath before the governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, and such oath shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as above directed; but after the first qualification of the officers herein specified in the case of a new territory, as well as in all organized territories, the like oath shall be taken, certified, and recorded in such manner and form as may be prescribed by the law of each territory.

SEC. 1879. The annual salary of the chief justice and associate justices of all the territories now organized shall be three thousand dollars each.

SEC. 1880. The salary of the attorney of the United States for each territory shall be at the rate of two hundred and fifty dollars annually.

SEC. 1881. The salary of the marshal of the United States for each territory shall be at the rate of two hundred dollars a year.

SEC. 1882. The salaries provided for in this title, to be paid to the governor, secretary, chief justices and associate justices, district attorney, and marshal of the several territories, shall be paid quarter-yearly at the treasury of the United States.

SEC. 1883. The fees and costs to be allowed to the United States attorneys and marshals, to the clerks of the supreme and district courts, and to jurors, witnesses, commissioners, and printers, in the territories of the United States shall be the same for similar services by such persons as prescribed in chapter sixteen, title "The Judiciary," and no other compensation shall be taxed or allowed.

SEC. 1884. When any officer of a territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the president, who shall officially certify his opinion of such cause to the proper accounting officer of the treasury, to be filed in his office.

SEC. 1885. The legislative assembly of every territory hereafter organized shall hold its first session at such time and place in the territory as the governor thereof shall appoint and direct; and at the first session of the legislative assembly, or as soon thereafter as it may be deemed expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for the territory at such place as they may think proper; but such place shall thereafter be subject to be changed by the governor and legislative assembly.

SEC. 1886. All accounts for disbursements, in the territories of the United States, of money appropriated by congress for the support of government therein, shall be settled and adjusted at the treasury department; and no act, resolution or order of the legislature of any territory directing the expenditures of the sum, shall be deemed a sufficient authority for such disbursement, but sufficient vouchers and proof for the same shall be required by the accounting officers of the treasury. No payment shall be made or allowed, unless the secretary of the treasury has estimated therefor and the object been approved by congress. No session of the legislature of a territory shall be held until the appropriation for its expenses has been made.

SEC. 1887. Hereafter no expense for printing, exceeding four thousand dollars, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the legislature of any of the territories.

SEC. 1888. No legislative assembly of a territory shall, in any instance or under any pretext, exceed the amount appropriated by congress for its annual expenses.

SEC. 1889. The legislative assemblies of the several territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, or the construction or operation of railroads, wagon-roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association.

[See chap. 168, p. 101, U. S. statutes at large, 45th congress, 2d session.]

"The words 'the legislative assemblies of the several territories shall not grant private charters or especial privileges' in section eighteen hundred and eighty-nine of the revised statutes of the United States shall not be construed as prohibiting the legislative assemblies of the several territories of the United States from creating towns, cities, or other municipal corporations, and providing for the government of the same, and conferring upon them the corporate powers and privileges, necessary to their local administration, by either general or special acts; and that all general and special acts of such legislative assemblies heretofore passed creating and providing for the government of towns, cities or other municipal corporations, and conferring such rights, powers and privileges upon the same, as were necessary to their local administration, be, and the same are hereby ratified and confirmed and declared to be valid, any law to the contrary notwithstanding, subject, however, to amendment or repeal hereafter by such territorial assemblies. But nothing herein shall have the effect to create any private right, except that of holding and executing municipal offices, or to divest any such right, or to make valid or invalid any contract or obligation heretofore made by or on behalf of any such town, city or other municipal corporation, or to authorize any such corporation to incur hereafter any debt or obligation other than such as shall be necessary to the administration of its internal affairs." [Approved, June 8, 1878.]

SEC. 1890. No corporation or association for religious or charitable purposes shall acquire or hold real estate in any territory, during the existence of the territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United

States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

SEC. 1891. The constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized territories, and in every territory hereafter organized as elsewhere within the United States.

SEC. 1892. Any penitentiary which has been or may hereafter be, erected by the United States in an organized territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the territory or district in which such penitentiary is situated; except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming and Colorado.

SEC. 1893. The attorney-general of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the attorney-general.

SEC. 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

SEC. 1895. Any person convicted by a court of competent jurisdiction in a territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted and employed in such penitentiary during the term of his imprisonment, in the same manner as if he had been convicted of an offense against the laws of the United States.

## CHAPTER II.

### OF PROVISIONS CONCERNING PARTICULAR ORGANIZED TERRITORIES.

SEC. 1898. All that portion of Oregon, while that state was a territory, lying and being south of the forty-ninth degree of north latitude, and north of the middle of the main channel of the Columbia river from its mouth to where the forty-sixth degree of north latitude crosses that river, near Fort Walla Walla; thence with the forty-sixth degree of latitude to the summit of the Rocky mountains, is organized into a temporary government by the name of the territory of Washington.

SEC. 1905. The elections in the territories of Washington and Idaho for delegates to the house of representatives shall be held biennially on the Tuesday next following the first Monday in November; and all elective territorial, county and precinct officers shall hereafter be elected at the times herein specified, unless otherwise provided by legislation subsequent hereto, in either of such territories.

SEC. 1906. The delegate to the house of representatives from each of the territories of Washington, Idaho, and Montana, must be a citizen of the United States.

SEC. 1907. The judicial power in New Mexico, Utah, Washington, Colorado, Dakota, Idaho, Montana and Wyoming, shall be vested in a supreme court, district courts, probate courts, and in justices of the peace.

SEC. 1911. Writs of error and appeals from the final decisions of the supreme court of Washington territory shall be allowed and may be taken to the supreme court of the United States in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath of either party, or of any other competent witness, exceeds two thousand dollars; and such writs of error and appeals shall be allowed, in all cases, where the constitution of the United States, or a treaty thereof, or acts of congress are brought in question; and each of the district courts shall have the same jurisdiction in all cases arising under the constitution of the United States, and the laws of the territory, as is vested in the circuit and district courts of the United States; but writs of error and appeals in all such cases may be had from the district courts to the supreme court of the territory, as in other cases. —[See *ante addendum*, Sec. 1868.]

SEC. 1912. The supreme and district courts of each territory, and the respective judges thereof, except for Idaho and Montana, may grant writs of *habeas corpus* in all cases in which the same are grantable by the judges of the United States in the District of Columbia.

SEC. 1913. The legislative assemblies of New Mexico, Utah, Washington, Colorado, Dakota, Arizona and Wyoming territories, respectively, may organize, alter, or modify the several judicial districts thereof, in such manner as each legislative assembly deems proper and convenient.

SEC. 1917. The district court for the several districts in the territory of Washington shall be held at such times and places in the districts not exceeding three places in each district, as the legislative assembly of that Territory may by law determine; but until the legislative assembly otherwise provides, the courts shall be held as provided by law on the ninth of February, eighteen hundred and sixty-three.

SEC. 1918. The legislative assemblies of New Mexico, Washington, Colorado, Dakota, Arizona, and Wyoming territories may assign the judges appointed for such territories, respectively, to the several judicial districts thereof, in such manner as each legislative assembly deems proper and convenient.

[Section 1922 repealed. See U. S. Laws 1878, page 193.]

SEC. 1923. In each of the Territories of Washington, Idaho and Montana, the governor shall have power to call the legislative assembly together by proclamation, on an extraordinary occasion, at any time.

SEC. 1924. In addition to the restrictions upon the legislative power of the territories contained in the preceding chapter, section eighteen hundred and fifty-one, the legislative assembly of Washington shall have no power to incorporate a bank or any institution with banking powers or to borrow money in the name of the territory, or to pledge the faith of the people of the same for any loan whatever, directly or indirectly. No charter granting any privileges of making, issuing, or putting into circulation any notes or bills in the likeness of bank-notes, or any bonds, scrip, drafts, bills of exchange, or obligations, or granting any other banking powers or privileges, shall be passed by the legislative assembly; nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in the Territory; nor shall the legislative assembly authorize the issue of any obligation, scrip, or evidence of debt, by the territory, in any mode or manner whatever, except certificates for service to the territory. And all taxes shall be equal and uniform, and no distinctions shall be made in the assessments between different kinds of property, but the assessments shall be according to the value of the property. To avoid improper influences, which may result from intermixing in the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

SEC. 1926. Justices of the peace, in the territories of New Mexico, Utah, Washington, Dakota, Idaho, Montana, and Wyoming, shall not have jurisdiction of any matter in controversy where the debt or sum claimed exceeds one hundred dollars.

SEC. 1933. Each clerk of a district court in Washington territory shall exercise the powers now provided by law for the clerk of the supreme court of the territory, and be subject to all provisions of law, not inconsistent with this act, applicable to the clerk of such supreme court.

SEC. 1938. There shall be appropriated, annually, fifteen hundred dollars for Washington territory, to be expended in like manner and for like purposes as specified in section nineteen hundred and thirty-five.

SEC. 1940. There shall be appropriated, respectively, for the territories of Washington, Idaho, and Montana, annually, a sufficient sum, to be expended by the secretary of each territory herein named upon an estimate to be made by the secretary of the treasury, to defray the expenses of the legislative assembly and other incidental expenses. The governor and secretary of each territory above specified, shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the secretary of the treasury, and shall, semi-annually, account to such secretary for the manner in which such sums of money have been expended.

SEC. 1941. No payment of salary shall be made to the governor, secretary, chief justice, and associate justices of Washington, Idaho, and Montana territories until such officers have entered upon the duties of their respective appointments.

SEC. 1942. The members of the legislative assemblies of New Mexico, Utah, Washington, Colorado, Dakota, Arizona and Wyoming territories shall each receive three dollars for every twenty miles' travel in going to and returning from the sessions of their respective bodies, estimated according to the nearest usually traveled route.

SEC. 1944. The seat of government of the territories of New Mexico, Utah, Washington, Colorado, Dakota, Arizona, and Wyoming may be changed by the governors and legislative assemblies thereof respectively.

SEC. 1947. Sections numbered sixteen and thirty-six in each township of Washington Territory shall be reserved for the purpose of being applied to common schools in that territory. In all cases where sections sixteen and thirty-six, or either or any of them, are occupied by actual settlers prior to survey thereof, the county commissioners of the counties in which such sections so occupied are situated are authorized to locate other lands, to an equal amount, in sections or fractional sections, as the case may be, within their respective counties, in lieu of the sections so occupied.

Sec. 1950. The state of Oregon and the territory of Washington shall have concurrent jurisdiction over all offenses committed on the Columbia river, where that river forms a common boundary between the state and territory.

Sec. 1951. All officers to be appointed by the president, by and with the advice and consent of the senate, for the territories of Washington, Idaho, and Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be intrusted to them for disbursement, shall give such security, at such time and in such manner as the secretary of the treasury may prescribe.

Sec. 1952. The laws now in force in the territory of Washington, by virtue of the legislation of congress in reference to Oregon, when that state was a territory, which were enacted and passed subsequent to the first day of September, eighteen hundred and forty-eight, applicable to the territory of Washington, together with the legislative enactments of Oregon, while a territory, enacted and passed prior to March 2, 1853, and not inconsistent with the provisions of this title, and applicable to the territory of Washington, are continued in force in that territory until repealed or amended by future legislation, unless such laws have been repealed or amended by legislation subsequent to the second day of March, eighteen hundred and fifty-three.

Sec. 1953. The libraries heretofore purchased by appropriations of congress for the Territories of Utah and Washington shall be kept at the respective seats of government of those territories for the use of the governor, legislative assembly, judges of the supreme court, secretary, marshal, and attorney of each territory, and such other persons and under such regulations as may be prescribed by law.

## CHAPTER III.

### ACTS OF CONGRESS APPLICABLE TO THE TERRITORIES.

CHAP. 114.—An act to protect all citizens in their civil and legal rights.

Whereas, It is essential to just government we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law: Therefore,

*Be it enacted by the Senate and House of Representatives of the*

*United States of America in Congress assembled*, That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantgages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt, with full costs; and shall also, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: *Provided*, That all persons may elect to sue for the penalty aforesaid or to proceed under their rights at common law and by state statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this proviso shall not apply to criminal proceedings, either under this act or the criminal law of any state: *And provided further*, That a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively.

SEC. 3. That the district and circuit courts of the United States shall have, exclusively of the courts of the several states, cognizance of all crimes and offenses against, and violations of, the provisions of this act; and actions for the penalty given by the preceding section may be prosecuted in the territorial, district, or circuit courts of the United States wherever the defendant may be found, without regard to the other party; and the district attorneys, marshals, and deputy marshals of the United States, and commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting and imprisoning or bailing offenders against the laws of the Uunited States, are hereby specially authorized and required to institute proceedings against every person who shall violate the provisions of this act, and cause him to be arrested and imprisoned or bailed, as the case may be, for trial before such court of the United States, or territorial court, as by law has cognizance of the offense, except in respect of the right of action accruing to the person aggrieved; and such district attorneys shall cause such proceedings to be prosecuted to their termination as in other cases: *Provided*, That nothing contained in this section shall be construed to deny or defeat any right of civil action accruing to any person, whether by reason of this act or otherwise; and any district attorney who shall willfully fail to institute and prosecute the proceedings herein required. shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action of debt, with full costs, and shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not less than one thousand nor more than five thousand dollars: *And provided further*, That a judgment for the penalty in favor of the party aggrieved against any such district attorney, or a judgment upon an indictment against any such district attorney, shall be a bar to either prosecution respectively.

SEC. 4. That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any state, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars.

SEC. 5. That all cases arising under the provisions of this act in the courts of the United States shall be reviewable by the Supreme court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are now provided by law for the review of other causes in said court.

[Approved March 1, 1875.]

CHAP. 37.—An act to make persons charged with crimes and offenses competent witnesses in the United States and territorial courts.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States courts, territorial courts and courts-martial, and courts of inquiry in any state or territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him.

[Approved March 16, 1878.]

## CHAPTER IV.

SEC. 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is bona-fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

Second. He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state or sovereignty; and, particularly, by name, to the prince, potentate, state or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held, and on his declaring on oath that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and, particularly, by name, to the prince, potentate, state or sovereignty, whereof he was before a citizen or subject; and, also, on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien applying for admission to citizenship. has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings required in this condition to be performed in the court, shall be recorded by the clerk thereof.

Sixth. Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses;

and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth (together with the names of such citizens, in the record of the court) admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*: That the declaration of intention to become a citizen of the United States, required by section two thousand one hundred and sixty-five of the revised statutes of the United States, may be made by an alien before the clerk of any of the courts named in said section two thousand one hundred and sixty-five; and all such declarations heretofore made before any such clerk are hereby declared as legal and valid as if made before one of the courts named in said section.

Sec. 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist in the armies of the United States, either the regular or volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person having been honorably discharged from the service of the United States.

Sec. 2167. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove, to the satisfaction of the court, that for two years next preceding it has been his bona-fide intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

Sec. 2168. When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

Sec. 2169. The provisions of this title shall apply to aliens (being free white persons, and to aliens) of African nativity and to persons of African descent.

Sec. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

SEC. 2171. No alien who is a native citizen or subject, or a denizen of any country, state or sovereignty, with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

SEC. 2173. The police court of the District of Columbia shall have no power to naturalize foreigners.

SEC. 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of hi declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

# CIVIL PROCEDURE.

## AN ACT

TO REGULATE THE PRACTICE AND PROCEEDINGS IN CIVIL ACTIONS.

## CHAPTER I.

### OF THE FORM OF CIVIL ACTIONS AND OF THE PARTIES THERETO.

SECTION
1. Common law declared in force.
2. Action, but one form of.
3. " parties how designated.
4. " to be in name of party in interest.
5. How executor, trustees, etc., may sue.
6. Husband, when to be joined; where.
6. Wife may sue alone.
7. Husband and wife, may join; when.
8. Widow, or widow and children may sue; when.
9. The mother may maintain for injury or death of child; when.
9. And guardian for injury or death of ward; when.
10. Who may maintain action for seduction.
11. Unmarried female, over twenty-one years of age, for seduction.
12. Infant to appear by guardian.

SECTION
12. Court shall appoint; when.
13. All persons interested must be joined as plaintiffs or defendants.
14. When one or more may sue or defend.
15. By assignee, how defended—set off, etc.
16. Persons severally liable, may be included in same action.
17. When action shall not abate.
18. Action for personal injury shall survive; may be prosecuted by whom.
19. Contract for purchase of lands; for recovery of purchase money; parties to.
20. Court may determine rights in certain cases.
21. New party to action; to what entitled.
22. In action for specific property who may be substituted as party.
23. Person may intervene before trial, how.
24. Intervenor shall serve copy upon parties.

SECTION 1. The common law of England, so far as it is not repugnant to, or inconsistent with the constitution and laws of the United States and the organic act and laws of Washington territory, shall be the rule of decision in all the courts of this territory.

SEC. 2. There shall be in this territory hereafter but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be called a civil action.

SEC. 3. The party commencing the action shall be known as the plaintiff, and the opposite party the defendant.

SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as is otherwise provided by law.

SEC. 5. An executor or administrator, or guardian of a minor or person of unsound mind, a trustee of an express trust, or a person authorized by statute, may sue without joining the person for whose benefit the suit is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

SEC. 6. When a married woman is a party her husband must be joined with her, except:

1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.

2. When the action is between herself and her husband, she may sue or be sued alone.

3. When she is living separate and apart from her husband, she may sue or be sued alone.

SEC. 7. Husband and wife may join in all causes of action arising from injuries to the person or character of either or both of them, or from injuries to the property of either or both of them, or arising out of any contract in favor of either or both of them. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also. And she may defend in all cases in which she is interested, whether she is sued with her husband or not.

SEC. 8. The widow, or widow and her children, or child or children, if no widow, of a man killed in a duel, shall have a right of action against the person killing him, and against the seconds and all aiders and abettors. When the death of a person is caused by the wrongful act or neglect of another, his heirs, or personal representatives may maintain an action for damages against the person causing the death; or when the death of a person is caused by an injury received in falling through any opening or defective place in any sidewalk, street, alley, square or wharf, his heirs, or personal representatives may maintain an action for damages against the person whose duty it was, at the time of the injury, to have kept in repair such sidewalk or other place. In every such action the jury may give such damages, pecuniary or exemplary, as, under all circumstances of the case may to them seem just.

SEC. 9. A father, or in case of the death or desertion of his family, the mother may maintain an action as plaintiff for the injury or death of a child, and a guardian for the injury or death of his ward.

SEC. 10. A father, or in case of his death or desertion of his family, the mother may maintain an action as plaintiff for the seduction of a daughter, and the guardian for the seduction of a ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

SEC. 11. An unmarried female over twenty-one years of age may maintain an action as plaintiff for her own seduction, and recover therein such damages as may be assessed in her favor; but the prosecution of an action to judgment by the father, mother, or guardian, as prescribed in the preceding section shall be a bar to an action by such unmarried female.

SEC. 12. When an infant is a party, he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:

1. When the infant is plaintiff, upon the application of the infant if he be of the age of fourteen years, or if under that age upon the application of a relative or friend of the infant.

2. When the infant is defendant, upon the application of the infant if he be of the age of fourteen years, and apply on the first day of the return term; if he be under the age of fourteen, or neglect to apply, then

upon the application of any other party to the action, or of a relative or friend of the infant.

Sec. 13. All persons interested in the cause of action, or necessary to the complete determination of the question involved, shall, unless otherwise provided by law, be joined as plaintiffs when their interest is in common with the party making the complaint, and as defendants when their interest is adverse to the plaintiff: *Provided*, That where good cause exists, which shall be made to appear in the complaint, why a party who should be a plaintiff cannot, from a want of consent on his part or otherwise, be made such plaintiff, he shall be made a defendant.

Sec. 14. When the question is one of common or general interest to many persons, or where the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

Sec. 15. Any assignee or assignees of any judgment, bond, specialty, book account or other chose in action, for the payment of money by assignment in writing, signed by the person authorized to make the same may, by virtue of such assignment, sue and maintain an action or actions in any court of law or equity as the case may require, in his or her name, against the obligor or obligors, debtor or debtors therein named, notwithstanding the assignor may have an interest in the thing assigned: *Provided*, That any debtor may plead in defense a counter-claim or an off-set, if held by him against the original owner, against the debt assigned, save that no counter-claim or off-set shall be pleaded against negotiable paper assigned before due, and where the holder thereof has purchased the same in good faith and for value, and is the owner of all the interest therein.

Sec. 16. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action, at the option of the plaintiff.

Sec. 17. No action shall abate by the death, marriage or other disability of the party, or by the transfer of any interest therein, if the cause of action survive or continue; but the court may at any time within one year thereafter, on motion, allow the action to be continued by or against his representatives or successors in interest.

Sec. 18. No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine by reason of such death if he have a wife or child living, but such action may be prosecuted, or commenced and prosecuted, in favor of such wife, or in favor of the wife and children, or if no wife, in favor of such child or children.

Sec. 19. In any action brought for the recovery of the purchase money against any person holding a contract for the purchase of lands, the party bound to perform the contract, if not the plaintiff, may be made a party, and the court in a final judgment may order the interest of purchaser to be sold or transferred to the plaintiff upon such terms as may be just, and may also order a specific performance of the contract in favor of the complainant, or the purchaser, in case a sale be ordered.

Sec. 20. The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall cause them to be brought in.

SEC. 21. When a new party is introduced into an action as a representative or successor of a former party, such new party is entitled to the same summons to be served in the same manner as required for defendants in the commencement of an action.

SEC. 22. A defendant against whom an action is pending upon a contract, or for specific real or personal property, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, may apply to the court for an order to substitute such person in his place, and discharge him from liability to either party on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may in its discretion make the order.

SEC. 23. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter in litigation in the success of either party, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff, in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff or by demanding anything adversely to both the plaintiff and the defendant, and is made by a complaint setting forth the grounds upon which the intervention rests, filed by leave of the court or judge on the *ex parte* motion of the party desiring to intervene.

SEC. 24. When leave is given to intervene, a copy of the intervenor's complaint shall be served upon the parties to the action or proceedings who have not appeared, or publication of a notice of the intervention containing a brief statement of the nature of the intervenor's demand shall be made in all cases where there are absent or non-resident defendants. The notice shall be published in the same manner and for the same length of time as prescribed in this act for publication of summons. And the complaint shall also be served upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint. The court shall determine upon the rights of the intervenor at the same time the action is decided, and if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention: *Provided*, That no intervention shall be cause for delay in the trial of an action between the original parties thereto beyond the term to which the action is brought.

# CHAPTER II.

## LIMITATION OF ACTIONS.

SECTION
25. Can only be commenced, when; objection, when and how taken.
26. To be commenced within ten years.
SECTION
27. To be commenced within six years.
28. " " " three years.
29. " " " two years.

Section
30. To be commenced within one year.
31. For statutory penalty, within three years.
32. Within three months.
33. Other actions within two years,
34. On mutual, open and current account.
35. Limitations shall apply to territory and public corporations; when action deemed commenced.
36. As to person out of, or concealed in territory.
37. Persons under certain disabilities.
38. By or against representatives, when cause of action survives.
39. In case of alien, etc.
40. When stayed by operation of law.

Section
41. In judgments reversed, if cause of action survives, heirs, etc., may commence within one year.
42. Disability must exist when right of action accrues.
43. When disabilities co-exist, all must be removed.
44. New promises in writing revive right of action.
45. Payment of principal or interest, fixes time that statute commences to run.
46. Of action between non-residents, or cause arising out of territory.

Sec. 25. Actions can only be commenced within the the periods herein prescribed after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute; but in the district court the objection that the action was not commenced within the time limited, can only be taken by answer.

Sec. 26. The period prescribed in the preceding section for the commencement of actions shall be as follows:

Within ten years:

1. Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appear that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

Sec. 27. Within six years:

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.

2. An action upon a contract in writing, or liability express or implied arising out of a written agreement.

3. An action for the rents and profits or for the use and occupation of real estate.

Sec. 28. Within three years:

1. An action for waste or trespass upon real property.

2. An action for taking, detaining or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated.

3. An action upon a contract or liability, express or implied, which is not in writing and does not arise out of any written instrument.

4. An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

5. An action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution; but this subdivision shall not apply to action for an escape.

6. An action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the territory except when the statute imposing it prescribed a different penalty.

7. An action for seduction and breach of promise of marriage.

Sec. 29. Within two years:

1. An action for libel, slander, assault, assault and battery, and false imprisonment.

2. An action upon a statute for a forfeiture or penalty to the territory.

Sec. 30. Within one year:

1. An action against a sheriff, or other officer for the escape of a prisoner arrested or imprisoned on civil process.

2. An action by an heir, legatee, creditor or other party interested, against an executor or administrator, for alleged misfeasance, malfeasance or mismanagement of the estate within one year from the time of final settlement, or, the time such alleged misconduct was discovered.

Sec. 31. An action upon a statute for a penalty given in whole or in part to the person who may prosecute for the same, shall be commenced within three years after the commission of the offense; and if the action be not commenced within one year by a private party, it may be commenced within two years after the commission of the offense in behalf of the territory by the prosecuting attorney of the district in which the county is situated, where said offense was committed.

Sec. 32. Within three months:

1. An appeal from any order of a board of county commissioners; or upon a claim rejected by said board.

2. Upon claims against an estate, rejected by an executor or administrator within three months after the rejection.

Sec. 33. An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

Sec. 34. In an action brought to recover a balance due upon a mutual open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side, but whenever a period of more than one year shall have elapsed between any of a series of items or demands, they are not to be deemed such an account.

Sec. 35. The limitations prescribed in this act shall apply to actions brought in the name of the territoy, or any county or other public corporation therein, or for its benefit, in the same manner as to actions by private parties. An action shall be deemed commenced when the complaint is filed.

Sec. 36. If the cause of action shall accrue against any person who shall be out of the territory or concealed therein, such action may be commenced within the terms herein respectively limited after the return of such person into the territory, or after the time of such concealment; and if after such cause of action shall have accrued, such person shall depart from and reside out of this territory or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

Sec. 37. If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of action.

Sec. 38. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of the time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his representatives after the expiration of that time and within one year after the issuing of letters testamentary or of administration.

Sec. 39. When a person shall be an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

Sec. 40. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Sec. 41. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on error or appeal, the plaintiff, or if he die and the cause of action survives, his heirs or representatives may commence a new action within one year after the reversal.

Sec. 42. No person shall avail himself of a disability unless it existed when his right of action accrued.

Sec. 43. When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

Sec. 44. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter, unless the same is contained in some writing signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

Sec. 45. When any payment of principal or interest has been or shall be made upon any existing contract, whether it be a bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Sec. 46. When the cause of action has arisen in another state, territory or country between non-residents of this territory, and by the laws of the state, territory or country where the action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this territory.

## CHAPTER III.

### OF VENUE OF CIVIL ACTIONS.

Section
47. Where shall be commenced.
48. Where shall be tried.
49. Against corporation, where office is, or agent.
50. In all other cases where to be tried.
51. Venue may be changed by court, when.
52. Of change of place of trial.

Section
53. District courts; transfer of cases to newly formed.
54. Duty of clerk when change is made.
55. By stipulation, venue need not be changed.
56. Change of venue may be vacated.
57. Venue, change of, when complete.
58. Clerk must transmit papers, etc,

Sec. 47. Actions for the following causes shall be commenced in the county or district in which the subject of the action, or some part thereof, is situated:

1. For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title, or for any injuries to real property.

2. All questions involving the rights to the possession or title to any specific article of personal property, in which last mentioned class of cases, damages may also be awarded for the detention and for injury to such personal property.

Sec. 48. Actions for the following causes shall be tried in the district or county where the cause, or some part thereof, arose:

1. For the recovery of a penalty or forfeiture imposed by statute.

2. Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or in his aid, shall do anything touching the duties of such officer.

Sec. 49. An action against a corporation may be brought in any county where the corporation has an office for the transaction of business, or any person resides upon whom process may be served against such corporation, unless otherwise provided in this code.

Sec. 50. In all other cases the action must be tried in the county in which the defendants, or some of them reside at the time of the commencement of the action, or may be served with process, subject, however, to the power of the court to change the place of trial, as provided in this act. If the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he appears and demurs or answers, files an affidavit of merits, and demands that the trial be had in the proper county.

Sec. 51. The court may, on motion, in the following cases, change the place of trial when it appears by affidavit, or other satisfactory proof:

1. That the county designated in the complaint is not the proper county; or,

2. That there is reason to believe that an impartial trial cannot be had therein; or,

3. That the convenience of witnesses or the ends of justice would be forwarded by the change; or,

4. That from any cause the judge is disqualified; which disqualification exists in either of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity, within the third degree; when he has been of counsel for either party in the action or proceeding.

Sec. 52. If the motion for a change of the place of trial be allowed, the change shall be made to the county or district where the action ought to have been commenced, if it be for the cause mentioned in subdivision one of section fifty-one, and in other cases to the most convenient county where the cause alleged does not exist. Neither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed.

Sec. 53. Any party in a civil action pending in any district court of a county out of whose limits a new county, in whole or in part, has been created, not attached to any other county for judicial purposes, and in which a district court has been created by law, may file with the clerk of such district court an affidavit setting forth that he is a resident of such newly created county, and that the venue of such action is transitory, or that the venue of such action is local and that it ought properly to be tried in such newly created county; and upon the filing of such affidavit, the clerk shall make out a transcript of the proceedings already had in such action in such district court, and certify it under the seal of the court and transmit such transcript, together with the papers on file in his office connected with such action to the clerk of the district court of such newly created county, wherein it shall be proceeded with as in other cases.

Sec. 54. When an order is made transferring an action or proceeding for trial, the clerk of the court must transmit the pleadings and papers therein to the court to which it is transferred. The costs and fees thereof and of filing the papers anew, must be paid by the party at whose instance the order was made, except in the cases mentioned in subdivision one, section fifty-one, in which case the plaintiff shall pay costs of transfer. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

Sec. 55. Notwithstanding the provisions of section fifty-one all the parties to the action by stipulation in writing or by consent in open court entered in the records may agree that the place of trial be changed to any county or district in the territory, and thereupon the court must order the change agreed upon.

Sec. 56. If such papers be not transmitted to the clerk of the proper court within the time prescribed in the order allowing the change, and the delay be caused by the act or omission of the party procuring the change, the adverse party, on motion to the court or judge thereof, may have the order vacated, and thereafter no other change of the place of trial shall be allowed to such party.

Sec. 57. Upon the filing of the papers with the clerk of the court to which the cause is transferred, the change of venue shall be deemed complete, and thereafter the action shall proceed as though it had been commenced in that court.

Sec. 58. The clerk of the court must also transmit with the original papers where an order is made changing the place of trial, a certified transcript of all record entries up to and including the order for such change.

## CHAPTER IV.

### MANNER OF COMMENCEMENT OF CIVIL ACTIONS.

Section
59. How commenced; when defendant may appear without summons.
60. Duty of clerk on filing complaint, and form of summons.
61. In real action, notice of pendency of action may be filed with county auditor.
62. Of service of summons.
63. Manner of service of summons.
64. Of service by publication.
65. Duty of clerk in cases of publication.
Section
66. Service by publication; how made.
67. Rights of defendant, served by publication.
68. When summons served on one or more defendants, not all, procedure.
69. Proof of service of summons.
70 Jurisdiction of court attaches, when.
71. Voluntary appearance, effect of.
72. What shall be treated as appearance of defendant.

Sec. 59. Civil actions in the several district courts in this territory shall be commenced by the filing of a complaint with the clerk of the court in which the action is brought, and the issuing of a summons thereon: *Provided*, That after the filing of the complaint, a defendant in the action may appear, answer or demur whether the summons has been issued or not, and such appearance, answer or demurrer shall be deemed a waiver of summons.

Sec. 60. The clerk shall endorse on the complaint the day, month and year the same is filed, and at any time within one year after the filing of the same, the plaintiff may have a summons issued. The summons shall run in the name of the United States of America, be dated and signed by the clerk, tested in the name of the judge of the court in which it issues, directed to the defendant, and issued under the seal of the court. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, and require the defendant to appear and answer the complaint within the time mentioned in this section, after the service of the summons, exclusive of the day of service, or judgment will be taken according to the prayer of the complaint. The clerk shall endorse on the summons the names of the plaintiff's attorneys. The time in which the summons shall require the defendant to answer shall be as follows:

1. If the defendant is served within the county in which the action is brought, twenty days.
2. If the defendant is served out of the county, but in the district in which the action is brought, thirty days.
3. If served in any other judicial district in the territory, forty days.
4. If served by publication, as hereafter provided, within sixty days after the date of the first publication of the summons: *Provided*, That if service is to be made by publication, the summons shall contain, in addition to the requirements of this section, the cause and general nature of the action.

Sec. 61. In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, and the defendant at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may file with the auditor of the county in which the property is situated, a notice of the pendancy of the action, containing the names of the parties to and the object of the action, and a description of the property in that county affected thereby; and the defendant may also in such notice state the nature and extent of the relief claimed in the answer. From the time of filing only, shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and this notice shall be recorded by the auditor as deeds and other conveyances are recorded.

Sec. 62. The summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him or appointed by a judge of the court in which the action is brought, or by any citizen of the United States over twenty-one years of age, other than the plaintiff, and who is competent to be a witness on the trial of the action. A copy of this complaint shall be served with the summons except where the service is by publication. When the summons is served by the sheriff or his deputy, it shall be returned with the certificate or affidavit of the officer, of its service, and of the service of the copy of the complaint, to the office of the clerk from which the summons issued. When the summons is served by any other person as before provided, it shall be returned to the office of the clerk from which it issued, with the affidavit of such person of its service, and of the service of the copy of the complaint. The plaintiff shall be entitled to as many writs of summons in the same suit as may be necessary to obtain jurisdiction of the person of the defendant, and they may be issued at the same or different times.

Sec. 63. The summons shall be served by delivering a copy thereof, as follows:

1. If the suit be against a corporation, to the president, or other head of the corporation, secretary, cashier or managing agent thereof.

2. If against any county in this territory, to the county auditor.

3. If the suit be against a foreign corporation, or a non-resident joint stock company or association doing business within this territory, to an agent, cashier or secretary thereof.

4. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, guardian, or if there be none within this territory, then to any person having the care or control of such minor, or with whom he reside, or in whose service he is employed.

5. If against a person for whom a guardian has been appointed for any cause, to such guardian.

6. In all other cases, to the defendant personally, or if he be not found, to some suitable person at the dwelling house or usual place of abode of the defendant.

Sec. 64. If at the time the complaint is filed or any time afterward the plaintiff or intervenor, or an attorney in the action for the plaintiff or intervenor, file in the action his affidavit stating that the person on whom service is to be made, resides out of the territory, or has departed from the territory, or cannot after due diligence be found within the territory, or conceals himself to avoid the service of summons, or the defendant or the party to be served is a foreign corporation, or the cause of action against such corporation arose within the territory, service may be made by the publication of the summons.

Sec. 65. When the affidavit required in section sixty-four has been filed, the clerk of the court shall make out a summons as required in section sixty, and shall deliver the same to the person filing the affidavit or his attorney in the action.

Sec. 66. Service of the summons by publication shall be made by advertising the same in full in some weekly newspaper published in the county where the court is held, if any such there be, and if not, then in a weekly newspaper of general circulation in the county where the court is held published in the judicial district where said court is held. Such publication shall be once a week for six consecutive weeks. Such summons must be published for the first time within the fourteen days following the date of said summons, and if not so published, a new summons for publication must be obtained.

Sec. 67. The defendant against whom publication is made, or his personal representatives, on application and sufficient cause shown at any time before judgment, shall be allowed to defend the action; and the defendant against whom publication is made, or his representatives, may in like manner upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment, and within one year after the entry of such judgment on such terms as may be just; and if the defense be successful, and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct. But the title to property sold upon execution issued on such judgment to a purchaser in good faith, shall not be thereby affected.

SEC. 68. When the action is against two or more defendants and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows:

1. If the action be against the defendants jointly indebted upon a contract, he may proceed against the defendants served, unless the court otherwise direct, and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all, and the separate property of the defendants served.

2. If the action be against the defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants.

SEC. 69. Proof of the service of the summons and copy of complaint, shall be as follows:

1. If served by the sheriff or his deputy, the return of such sheriff or deputy.

2. If by any other person, his affidavit thereof.

3. The written admission of the defendant, dated and endorsed upon the summons, stating the time and place of service.

4. In case of publication the affidavit of the editor, publisher, foreman, or principal clerk to such publication. If the service is by publication, the original summons shall be returned to the clerk of the court who issued it accompanied by a printed copy thereof as published, together with the affidavit of the editor, publisher, foreman, or principal clerk employed in the newspaper office where published, showing in what capacity the affiant makes the affidavit, the name of such weekly newspaper, the place where it is published, and its general circulation in the county where the court is held if not published in such county, and that the printed copy as returned was published for six consecutive weeks in such newspaper, and showing also the date of the first publication and the date of the last publication thereof, and that said newspaper named is a newspaper published at least once a week as a weekly newspaper, in the county or judicial district required in section sixty-six of this act.

SEC. 70. From the time of service of the summons and copy of the complaint, in an action at law, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings.

SEC. 71. A voluntary appearance of the defendant shall be equivalent to personal service of the summons and a copy of the complaint upon him.

SEC. 72. A defendant appears in an action when he answers, demurs or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance a defendant or his attorney is entitled to notice of all subsequent proceedings, of which notice is required to be given. But where a defendant has not appeared, service of notice or papers need not be made upon him, unless he is imprisoned for want of bail.

## CHAPTER V.

### OF PLEADINGS.

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73. Forms of abolished; and sufficiency of, how determined.
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75. Of complaint.
76. Complaint, shall contain what.
77. Demurrer to causes of.
78. Demurrer may be in language of statute.
79. If objections do not appear, must be taken by answer.
80. Service of amended complaint.
81. Objections; when shall be deemed waived.

SECTION
82. Answer must contain, what.
83. Counter claim defined.
84. Defendant may demur to one or more causes of action.
85. Of sham, frivolous, etc., answers.
86. Plaintiff may reply to new matter in answer.
87. Of demurrer to new matter in answer.
88. Judgment upon new matter in answer.
89. When defendant may demur to reply.
90. Rules of court to fix times of filing pleadings.

SEC. 73. All the forms of pleadings heretofore existing in civil actions inconsistent with the provisions of this code, are abolished, and hereafter the forms of pleading and the rule by which, the sufficiency of the pleadings is to be determined, shall be as herein prescribed.

SEC. 74. The only pleadings on the part of the plaintiff shall be:

1. The complaint. 2. The demurrer. 3. The reply. And on the part of the defendant: 1. The demurrer. 2. The answer.

SEC. 75. The first pleading on the part of the plaintiff shall be the complaint.

SEC. 76. The complaint shall contain:

1. The title of cause, specifying the name of the court, the name of the county in which the action is brought, and the name of the parties to the action, plaintiff and defendant.

2. A plain and concise statement of facts constituting the cause of action, without unnecessary repetition.

3. A demand for the relief which plaintiff claims; if the recovery of money, or damages be demanded, the amount thereof shall be stated.

4. When the relief sought is of an equitable nature, the complaint shall be addressed to the judge of the district, in which the action is brought.

SEC. 77. The defendant may demur to the complaint, when it shall appear upon the face thereof, either

1. That the court has no jurisdiction of the person of the defendant or of the subject matter of the action.

2. That the plaintiff has no legal capacity to sue; or,

3. That there is another action pending between the same parties for the same cause; or,

4. That there is a defect of parties, plaintiff or defendant; or,

5. That several causes of action have been improperly united.

6. That the complaint does not state facts sufficient to constitute a cause of action.

SEC. 78. The demurrer may specify the grounds of objection in the statutory language of section seventy-seven, or the grounds may be distinctly specified; it may be taken to the whole complaint; or to any one of the alleged causes of action stated therein.

SEC. 79. When any of the matters enumerated in section seventy-seven do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 80. If the complaint be amended, a copy thereof shall be served on the defendant or his attorney, and the defendant shall answer the same within such time as may be prescribed by the court; and if he omit to do so, the plaintiff may proceed to obtain judgment as in other cases of failure to answer.

SEC. 81. If no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting always the objection that the court has no jurisdiction, or that the complaint does not state facts sufficient to constitute a cause of action, which objection can be made at any stage of the proceedings, either in the district or supreme court.

SEC. 82. The answer of the defendant must contain:

1. A general or specific denial of each material allegation of the complaint controverted by the defendant or of any *knowledge or information* thereof sufficient to form a belief.

2. A statement of any new matter constituting a defense or counter claim, in ordinary and concise language without repetition.

SEC. 83. The counter claim mentioned in the preceding section, must be one existing in favor of a defendant, and against a plaintiff between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the contract, or transaction set forth in the complaint, as the foundation of the plaintiff's claim, or connected with the subject of the action.

2. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action.

3. The defendant may set forth by answer as many defenses and counter claims as he may have whether they be such as have been heretofore denominated legal or equitable, or both. They shall each be separately stated, and refer to the causes of action which they are intended to answer, in such a manner that they may be intelligibly distinguished.

SEC. 84. The defendant may demur to one or more of several causes of action stated in the complaint, and answer the residue.

SEC. 85. Sham, frivolous and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose.

SEC. 86. When the answer contains new matter, constituting a defense or counter claim, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer.

SEC. 87. The plaintiff may demur to an answer containing new matter, when it appears upon the face thereof, that such new matter does not constitute a defense or counter claim, or he may for like cause demur to one or more of such defenses or counter claims, and reply to the residue.

SEC. 88. If the answer contain a statement of new matter constituting a defense or counter claim, and the plaintiff fail to reply or demur thereto within the time prescribed by law, the defendant may move the court for such judgment as he is entitled to on the pleadings, and if the case require it he may have a jury called to assess the damages.

Sec. 89. The defendant may demur to any new matter contained in the reply, when it appears upon the face thereof that such new matter is not a sufficient reply to the facts stated in the answer. Sham, frivolous and irrelevant replies may be stricken out in like manner and on the same terms as like answers and defenses.

Sec. 90. The court shall establish the rules prescribing the time in which pleadings subsequent to the complaint shall be filed.

## CHAPTER VI.

### VERIFICATION OF PLEADINGS.

Section
91. By whom and how made.
92. When may be omitted, nor shall a pleading be used in criminal prosecution.

Sec. 91. Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by the party, his agent or attorney, to the effect that he believes it to be true. The verification must be made by the affidavit of the party, or, if there be several parties united in interest and pleading together, by one at least of such parties, if such party be within the county and capable of making the affidavit; otherwise the affidavit may be made by the agent or attorney of the party. The affidavit may also be made by the agent or attorney if the action or defense be founded on a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the affidavit is made by the agent or attorney it must set forth the reason of his making it. When a corporation is a party, the verification may be made by any officer thereof, upon whom service of a notice might be made; and when the territory, or any officer thereof in its behalf, is a party, the verification may be made by any person to whom all the material allegations of the pleading are known.

Sec. 92. When, in the judgment of the court, an answer to an allegation in any pleading might subject the party answering, to a criminal prosecution, the verification of the answer to such allegation may be omitted. No pleading shall be used in a criminal prosecution against the party, as evidence of a fact alleged in such pleading.

## CHAPTER VII.

### GENERAL RULES OF PLEADINGS.

Section
93. How instrument of writing may be pleaded, and service of copy or bill of particulars furnished.
94. How pleading shall be construed.
95. Irrelevant matter be stricken out, and may be made definite.
96. Judgments; how pleaded.
97. Conditions precedent; how pleaded.
98. Private statute; how pleaded.
99. In actions for libel and slander.
100. In action for libel; answer of defendant.
101. In action for possession of property distrained; sufficiency of answer.
102. What causes of action may be united.
103. Material allegation not controverted to be taken as true.
104 Material allegation defined.

Sec. 93. It shall not be necessary for a party to set forth in a pleading a copy of the instrument of writing, or the items of an account therein alleged; but unless he file a verified copy thereof with such pleadings, and serve the same on the adverse party, he shall, within ten days after a demand thereof, in writing, deliver to the adverse party a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or judge thereof, may order a further account, when the one delivered is defective; and the court may, in all cases, order a bill of particulars of the claim of either party to be furnished.

SEC. 94. In the construction of a pleading, for the purpose of determining its effect, its allegation shall be liberally construed, with a view to substantial justice between the parties.

SEC. 95. If irrelevant or redundant matter be inserted in a pleading it may be stricken out on motion of any person aggrieved thereby; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment, or may dismiss the same.

SEC. 96. In pleading a judgment or other determination of a court or office of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

SEC. 97. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance.

SEC. 98. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

SEC. 99. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff, of the defamatory matter out of which the cause arose, but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall be bound to establish on trial that it was so published or spoken.

SEC. 100. In an action mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

SEC. 101. In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he acted, was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing the damage thereon, shall be good, without setting forth the title to such real property.

Sec. 102. The plaintiff may unite several causes of action in the same complaint, when they all arise out of

1. Contract, express or implied; or,
2. Injuries, with or without force, to the person; or,
3. Injuries, with or without force, to property; or,
4. Injuries to character; or,
5. Claims to recover real property, with or without damages, for the withholding thereof; or,
6. Claims to recover personal property, with or without damages, for the withholding thereof; or,
7. Claims against a trustee, by virtue of a contract or by operation of law.

But the causes of action, so united, must affect all the parties to the action, and not require different places of trial, and must be separately stated.

Sec. 103. Every material allegation of the complaint, not controverted by the answer, and every material allegation of new matter in the answer, not controverted by the reply, shall, for the purpose of action, be taken as true; but the allegation of new matter in a reply, is to be deemed controverted by the adverse party, as upon a direct denial or avoidance, as the case may require.

Sec. 104. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

## CHAPTER VIII.

### MISTAKES IN PLEADINGS: AMENDMENTS.

Section
105. Variance, when shall be deemed material.
106. When the variance is not material.
107. Difference between variance and failure of proof, deemed a case of variance.
108. Action to recover possession of personal property, when plaintiff shall be permitted to amend.
109. Power of court to allow amendments.
110. If allowed new pleading shall be filed, what shall be called, and what shall be.
111. Pleading not verified, and cause of action, not separately pleaded stricken out.—Terms.
112. When defendant's name is unknown, he may be designated by any name.
113. Errors not affecting substantial rights to be disregarded.
114. Supplemental pleadings may be allowed.

Sec. 105. No variance between the allegation in a pleading, and the proof, shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled, and, thereupon, the court may order the pleading to be amended upon such terms as shall be just.

Sec. 106. When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs.

Sec. 107. When, however, the allegation of the cause of action or defense, to which the proof is directed, is not proved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

Sec. 108. Where the plaintiff in an action to recover the possession of personal property on a claim of being the owner thereof, shall fail to establish on trial such ownership, but shall prove that he is entitled to the possession thereof, by virtue of a special property therein, he shall not thereby be defeated of his action, but shall be permitted to amend, on reasonable terms his complaint, and be entitled to judgment according to the proof in the case.

Sec. 109. The court may, in furtherance of justice, and on such terms as may be proper, amend any pleadings or proceedings, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms, allow an answer to be made after the time limited by this code; and may upon such terms as may be just, and upon payment of costs, relieve a party, or his legal representatives from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect; and when for any cause satisfactory to the court, or the judge at chambers, the party aggrieved has been unable to apply for the relief sought during the term at which such judgment, order or proceeding complained of was taken, the court, or the judge at chambers, in vacation, may grant the relief upon application made within a reasonable time, not exceeding five months after the adjournment of the term.

Sec. 110. When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself, without reference to the original, or any preceding amended one.

Sec. 111. Any pleading not duly verified and subscribed, may, on motion of the adverse party, be stricken out of the case. When any pleading contains more than one cause of action or defense, if the same be not pleaded separately, such pleading may, on motion of the adverse party, be stricken out of the case. When a motion to strike out is allowed, the court may, upon such terms as may be proper, allow the party to file an amended pleading; or, if the motion be disallowed, and it appear to have been made in good faith, the court may, upon like terms, allow the party to plead over.

Sec. 112. When the plaintiff shall be ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

Sec. 113. The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect.

Sec. 114. The court may, on motion, allow supplemental pleadings, showing facts which occurred after the former pleadings were filed.

# CHAPTER IX.

## OF ARRESTS AND BAIL.

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115. Arrest must be on order of court.
116. In what cases court may order.
117. Order, when made and where filed.
118. Order, what shall specify.
119. Before issuing warrant, clerk shall require.
120. Order of arrest, how vacated.
121. Warrant shall not issue until
122. Order must be delivered to sheriff.
123. How sheriff shall execute.
124. Defendant may give bail.
125. Warrant, what shall contain.
126. Of surrender of defendant by bail.
127. Defendant may be arrested by bail.
128. Bail, how proceeded against.
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129. Bail, how exonerated.
130. Return of sheriff, plaintiff may object to bail.
131. Notice of justification of bail.
132. Bail, qualification of.
133. Must attend before judge, etc.
134. Duty of judge or justice in such case.
135. Defendant may deposit amount.
136. Sheriff shall pay deposit into court.
137. Deposit refunded on giving bail.
138. Deposit may be applied to satisfy judgment.
139. When sheriff liable as bail.
140. Sheriff liable on official bond.
141. When bail liable to sheriff.

SEC. 115. No person shall be arrested or held to bail in any civil action, except upon the order of the court where the action is brought, or a judge of the supreme court.

SEC. 116. The defendant may be arrested in the following cases:

1. In an action for the recovery of damages, on a cause of action not arising out of contract, where the defendant is a non-resident of the territory, or is about to remove therefrom, or where the action is for an injury to person or character, or for injuring, or for wrongfully taking, detaining or converting property.

2. In an action for a fine or penalty. or on a promise to marry, or for money received, or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

3. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

4. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which, the action is brought.

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

6. When the action is to prevent threatened injury to, or destruction of property, in which the party bringing the action has some right, interest, or title, which will be impaired or destroyed by such injury or destruction, and the danger is imminent that such property will be destroyed, or its value impaired, to the injury of the plaintiff.

7. On the final judgment or order of any court in this territory, while the same remains in force, when the defendant, having no property subject to execution, or not sufficient to satisfy such judgment, has money which he ought to apply in payment upon such judgment, which he refuses to apply, with intent to defraud the plaintiff, or when he refuses to comply with a legal order of the court, with intent to defraud

the plaintiff; or, when any one or more of the causes exist for which an arrest is allowed, in the first class of cases mentioned in this section.

Sec. 117. The court or judge making the order of arrest, shall first be satisfied by the affidavit of the party, or his agent or attorney, and other proof, that the case is one in which an arrest is provided for in section one hundred and sixteen, and that one or more of the prescribed causes exist, which proof shall be in writing, and, together with the order, be filed with the clerk, before he shall issue any warrant for the arrest.

Sec. 118. The court or judge making the order shall, in all cases, specify therein the amount in which the defendant shall be held to bail, which shall, in no case, exceed the demand of the plaintiff, and one hundred dollars in addition thereto, which amount the clerk shall endorse upon the writ, and the court shall also, in the order, fix the amount of the bond to be given by the plaintiff, as provided in the next succeeding section, which amount shall in no case be less than one hundred dollars.

Sec. 119. Before any clerk shall issue a warrant for the arrest of the defendant, he shall require the plaintiff to place on file in his office, a copy of the order granting the warrant, unless the same was made in open court and appears in the minutes; the original affidavit and proofs, upon which the order was made, and a bond on behalf of the plaintiff, in such an amount as the court or judge may have fixed in the order, with sureties to the satisfaction of the clerk, conditioned to pay to the defendant all damages which he shall suffer, and all expenses he shall incur by reason of such arrest or imprisonment, if the order shall be vacated in the manner provided for in the next succeeding section, or if the plaintiff fail to recover in his action.

Sec. 120. The defendant may, on motion, apply to the court to vacate the order of arrest, on the ground of insufficiency of the proof, or he may show that the facts alleged, upon which the order issued, are untrue, or he may apply to have the amount of bail reduced. If the court, upon any such motion, shall vacate the order, the defendant shall be discharged from the arrest, and any bond he may have given shall be canceled, but the action, unless dismissed for other cause, shall be conducted in the same manner as in cases where complaint and notice were duly served and filed.

Sec. 121. When an order of arrest is granted prior to the filing of the complaint, the warrant shall not issue until the complaint is filed with the clerk, and a copy of said complaint shall be served on the defendant with the warrant; but an order of arrest may be granted at any time after the action is commenced and before judgment is satisfied, when the party seeking the order shall comply with the preceding provisions in regard to arrests.

Sec. 122. The warrant must be delivered to the sheriff, who, upon arresting the defendant, must deliver to him a copy thereof.

Sec. 123. The sheriff shall execute the warrant by arresting the defendant, and keeping him in custody until discharged by law. And the plaintiff, in the first instance, shall be liable for the sheriff's fees, for the food and maintenance of any person, under arrest, which, if required by the sheriff, shall be paid weekly in advance. And such fees, so paid, shall be added to the costs taxed or accruing in the case, and be collected as other costs. And if the plaintiff shall neglect to pay such fees for three days after a demand, in writing, upon the plaintiff or his attorney, for payment, the sheriff may discharge defendant out of custody.

Sec. 124. The defendant may give bail by causing a bond to be executed by two or more sufficient sureties, stating their places of residence and occupations, conditioned that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment rendered therein; or, if he be arrested for the cause mentioned in the third subdivision of section one hundred and sixteen, it shall be further conditioned that the specific article of property, or instrument of writing which is the subject matter of the writ, shall be forthcoming, to abide any order which shall be made therein; or, if he be arrested for the cause mentioned in the sixth subdivision of said section it shall be further conditioned that he will not commit the injury or destruction alleged to be threatened in the affidavit or proofs on which the arrest is ordered.

Sec. 125. The warrant shall, in all cases, contain a short statement of the alleged causes for which the order was granted, and also the amount for which bail is required.

Sec. 126. At any time before a failure to comply with their bonds, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

1. A certified copy of the bail bond shall be delivered to the sheriff, who shall retain the defendant in his custody thereon as upon an order of arrest, and by a certificate in writing, acknowledge the surrender.

2. Upon the production of a copy of the bail bond and sheriff's certificate, a judge of the district court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on such application, they shall be exonerated accordingly. But this section does not apply to an arrest for the cause mentioned in the sixth subdivision of section one hundred and sixteen.

Sec. 127. For the purpose of surrendering the defendant the bail, at any time or place before they are finally discharged, may themselves arrest him, or, by written authority, indorsed upon a certified copy of the bond, may empower any person of suitable age and discretion to do so.

Sec. 128. In case of failure to comply with the condition of the bond, the bail can be proceeded against by action only.

Sec. 129. The bail may be exonerated, either by the death of the defendant, or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in exoneration thereof, within twenty days after commencement of the action against the bail, or within such further time as may be granted by the court.

Sec. 130. Within the time limited for that purpose, the sheriff must deliver the order of arrest to the clerk, with his return endorsed thereon, and the bond of the bail, or a copy thereof. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he must be deemed to have accepted it, and the sheriff shall be exonerated from liability.

SEC. 131. On the receipt of notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff or his attorney notice of the justification of the same, or their bail, (specifying the places of residences and occupations of the latter), before judgment of the court or justice of the peace, at a specified time and place, the time to be not less than five days nor more than ten thereafter. In case other bail be given, there must be a new bond in the form prescribed in section one hundred and twenty-four.

SEC. 132. The qualifications of the bail shall be as follows:

1. Each of them shall be a resident of the territory; but no counselor or attorney at law, sheriff, clerk of the district court, or other officer of such court, shall be permitted to become bail in any action.

2. Each of the bail shall be worth the amount specified in the order of arrest, or the amount to which the order may be reduced, as provided in this chapter, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge or justice, on justification, may allow more than two sureties to justify, severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

SEC. 133. For the purpose of justification, each of the bail must attend before the judge or justice of the peace at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff touching his sufficiency, in such manner as the judge or justice of the peace, in his discretion, may think proper. The examination must be reduced to writing and subscribed by the bail, if required by the plaintiff.

SEC. 134. If the judge or justice find the bail sufficient, he shall endorse his allowance thereof on the bond and cause it to be filed with the clerk, and the sheriff shall thereupon be exonorated from liability.

SEC. 135. The defendant may at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order.—The sheriff must thereupon give the defendant a certificate of deposit, and the defendant shall be discharged from custody.

SEC. 136. The sheriff shall, within ten days after the deposit, pay the same into court, and take from the officer receiving the same two certificates of such payment, the one of which he must deliver to the plaintiff and the other to the defendant. For any default in making such payment, the same proceeding may be had on the official bond of the sheriff to collect the sum deposited, as in case of delinquency.

SEC. 137. If the money be deposited, as provided in the last two sections, bail may be given and justified, upon notice as hereinbefore provided, at any time before judgment; and thereupon the judge before whom justification is had, shall direct in the order of allowance that the money deposited be refunded by the sheriff or clerk to the defendant, and it shall be refunded accordingly.

SEC. 138. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in the satisfaction thereof, and, after satisfying judgment, refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

SEC. 139. If, after being arrested, the defendant escapes or be rescued, the sheriff himself shall be liable as bail; but he may discharge himself from such liability, by giving bail at any time before judgment.

SEC. 140. If the judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied, the same proceedings may be had on the official bond of the sheriff to collect the deficiency, as in other cases of delinquency.

SEC. 141. The bail taken on arrest shall, unless they justify, or other bail be given or justified, be liable to the sheriff, by action, for the damages which he may sustain by reason of such omission.

## CHAPTER X.

### CLAIM TO RECOVER PERSONAL PROPERTY.

SECTION
142. Plaintiff may claim delivery of personal property.
143. When delivery claimed; affidavit required.
144. Security on the part of the plaintiff.
145. Exception to sureties. proceedings.
146. Defendant; when entitled to re-delivery.
147. Justification of defendant's sureties.
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148. Qualification and justification of sureties.
149. Sheriff to take property concealed; how.
150. Sheriff to keep property, and deliver; to whom and when.
151. Claim by other than the defendant.
152. Sheriff to file affidavit; with whom and when.

SEC. 142. The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property as herein provided.

SEC. 143. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

1. That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth.
2. That the property is wrongfully detained by defendant.
3. That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff; or if so seized, that it is by law exempt from such seizure. And,
4. The actual value of the property.

SEC. 144. Upon the receipt of the affidavit, and a bond to the defendant, executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit and bond, by delivering the same to him personally, if he can be found, or his agent, from whose possession the property is taken; or if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion: or, if neither have any known place of abode, by putting them in the post-office, directed to the defendant, at the post-office nearest his place of residence.

Sec. 145. The defendant may, within three days after the service of a copy of the affidavit and bond, give notice to the sheriff that he excepts to the sufficiency of the sureties; if he fail to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify on notice, in like manner as bail on arrest, and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

Sec. 146. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a bond executed by one or more sufficient sureties to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and fifty-one.

Sec. 147. The defendant's sureties, upon a notice to the plaintiff or his attorney, of not less than two, nor more than six days, shall justify in the same manner as bail upon arrest; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed, or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Sec. 148. The qualification of sureties and their justification shall be as prescribed in respect to bail upon an order of arrest.

Sec. 149. If the property or any part thereof be concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open and take the property into his possession, and if necessary, he may call to his aid the power of his county.

Sec. 150. When the sheriff shall have taken the property as herein provided, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

Sec. 151. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand indemnify the sheriff against such claim by a bond, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

SEC. 152. The sheriff shall file the affidavit, with the proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein; or if the clerk reside in another county, shall mail or forward the same within that time.

## CHAPTER XI.

### INJUNCTIONS AND RESTRAINING ORDERS.

SECTION
153. Restraining orders and injunctions; by whom granted.
154. When an injunction may be granted—temporary.
155. At what time an injunction may be granted.
156. Notice; restraining order granted in emergency.
157. On hearing, parties may read affidavits.
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167. Proceedings for contempt.
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169. Motion to dissolve or modify.
170. Damages awarded after dissolution
171. When dissolved, damages shall include.
172. Court may reinstate.
173. Power of judge in vacation.

SEC. 153. Restraining orders and injunctions may be granted by the district court in term time, or by any judge of the supreme court in vacation.

SEC. 154. When it appears by the complaint that the plaintiff is entitled to the relief demanded and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great injury to the plaintiff; or when during the litigation, it appears that the defendant is doing, or threatened, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action tending to render the judgment ineffectual; or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion. And where it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property.

SEC. 155. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment in that proceeding.

SEC. 156. No injunction shall be granted until it shall appear to the court or judge granting it, that some one or more of the opposite party concerned, has had reasonable notice of the time and place of making application, except that in cases of emergency to be shown in the complaint, the court may grant a restaining order until notice can be given and hearing had thereon.

SEC. 157. On the hearing of an application for an injunction, each party may read affidavits.

SEC. 158. Upon the granting or continuing an injunction, such terms and conditions may be imposed upon the party obtaining it as may be deemed equitable.

SEC. 159. No injunction or restraining order shall be granted until the party asking it shall enter into a bond, in such a sum as shall be fixed by the court or judge granting the order, with surety to the satisfaction of the clerk of the district court, to the adverse party affected thereby, conditioned to pay all damages and costs which may accrue by reason of the injunction or restraining order. The sureties shall, if required by the clerk, justify in like manner as bail upon an arrest, and until they so justify, the clerk shall be responsible for their sufficiency.

SEC. 160. When an injunction is granted upon the hearing, after a temporary restraining order, the plaintiff shall not be required to enter into a second bond, unless the former shall be deemed insufficient, but the plaintiff and his surety shall remain liable upon his original bond.

SEC. 161. It shall not be necessary to issue a writ of injunction, but the clerk shall issue a copy of the order or injunction duly certified by him, which shall be forthwith served by delivering the same to the adverse party.

SEC. 162. In application to stay proceedings after judgment, the plaintiff shall endorse upon his complaint a release of errors in the judgment whenever required to do so by the judge or court.

SEC. 163. An order of injunction shall bind every person and officer restrained from the time he is informed thereof.

SEC. 164. When notice of the application for an injunction has been served upon the adverse party, it shall not be necessary to serve the order upon him, but he shall be bound by the injunction as soon as the bond required of the plaintiff is executed and delivered to the proper officer.

SEC. 165. Money collected upon a judgment afterward enjoined, remaining in the hands of the collecting officer, shall be paid to the clerk of the court granting the injunction, subject to the order of the court.

SEC. 166. Whenever it shall appear to any court granting an order of injunction, or judge thereof in vacation, by affidavit, that any person has willfully disobeyed the order after notice thereof. such court or judge shall award an attachment for contempt against the party charged, or a rule to show cause why it should not issue. The attachment or rule shall be issued by the clerk of the court, and directed to the sheriff, and shall be served by him.

SEC. 167. The attachment for contempt shall be immediately served, by arresting the party charged, and bringing him into court, if in session, to be dealt with as in other cases of contempt; and the court shall also take all necessary measures to secure and indemnify the plaintiff against damages in the premises.

SEC. 168. If the court is not in session, the officer making the arrest shall cause the person to enter into a bond, with surety, to be approved by the officer, conditioned that he personally appear in open court, on the first day of the next term thereof, to answer such contempt, and that he will pay to the plaintiff all his damages and costs occasioned by the breach of the order; and in default thereof, he shall be committed to the jail of the county until he shall enter into such bond with surety, or be otherwise legally discharged.

Sec. 169. Motions to dissolve or modify injunctions may be made in open court, or before a judge of the supreme court in vacation, at any time after reasonable notice to the adverse party.

Sec. 170. When an injunction to stay proceedings after judgment for debt or damages shall be dissolved, the court shall award such damages not exceeding ten per cent. on the judgment, as the court may deem right, against the party in whose favor the injunction issued.

Sec. 171. If an injunction to stay proceedings after verdict or judgment in an action for the recovery of real estate, or the possession thereof, be dissolved, the damages assessed against the party obtaining the injunction, shall include the reasonable rents and profits of the lands recovered, and all waste committed after granting injunction.

Sec. 172. Upon an order being made dissolving or modifying an order of injunction, the plaintiff may move the court to reinstate the order, and the court may, in its discretion, allow the motion, and appoint a time for hearing the same before the court, or a time and place for hearing before some judge thereof, and upon the hearing, the parties may produce such additional affidavits or depositions as the court shall direct, and the order of injunction shall be dissolved, modified, or reinstated, as the court or judge may deem right. Until the hearing of the motion to reinstate the order of injunction, the order to dissolve or modify it, shall be suspended.

Sec. 173. The judge of the district court shall have power to make every order in vacation which by the provisions of this chapter, may be made by the court in term time.

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## CHAPTER XII.

### ATTACHMENT.

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180. Notice to sheriff that person has property or owes debts to plaintiff.
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185. Judgment to be satisfied out of the property attached; how.
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Sec. 174. The plaintiff at the time of issuing the summons, or at any time afterward, before judgment, may have the property of the defendant attached in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

Sec. 175. The writ of attachment shall be issued by the clerk of the court in which the action is pending; but before any such writ shall issue the plaintiff or some one in his behalf, shall make and file with such clerk an affidavit, stating that a cause of action exists against the defendant in favor of the plaintiff, and the nature thereof, and that the defendant is indebted to the plaintiff thereon, specifying the amount of said indebtedness, as near as may be, over and above all set offs and counter claims, and that the same is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or if originally so secured, such security has, without any act of the plaintiff's, become inadequate.

Sec. 176. Before the writ of attachment shall issue, the plaintiff, or some one in his behalf, shall execute and file with the clerk a bond or undertaking, with two or more sureties, in a sum not less than two hundred dollars and equal to the amount for which plaintiff demands judgment, conditioned that the plaintiff will pay all costs that may be adjudged to the defendant and all damages which he may sustain by reason of the attachment not exceeding the amount specified in such bond or undertaking, should the same be wrongful or oppressive. With the bond or undertaking, there shall also be filed the affidavit of the sureties, from which it must appear that such sureties are qualified and that, taken together, they are worth the sum specified in the bond or undertaking over and above all debts and liabilities and property exempt from execution. No person, not qualified to become bail upon arrest, is qualified to become surety upon a bond or undertaking for an attachment.

Sec. 177. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and shall require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, together with costs and expenses. Several writs may be issued at the same time, to the sheriffs of different counties. After the return of any writ of attachment, by the sheriff executing the same, the plaintiff, notwithstanding such return, may have other writs of attachment issue in the same action, without further proceedings, the same to be executed in the same manner as original writs.

Sec. 178. The rights or shares which such defendant may have in the stock of any association or corporation, together with the interest, and profits thereon, and all other property in this territory of such defendant not exempt from execution, shall be liable to be attached. The sheriff shall note upon the writ the date of its delivery to him, and shall make a full inventory of the property attached, and return the same with the writ.

Sec. 179. The sheriff to whom the writ is directed and delivered shall execute the same without delay, as follows:

1. Real property shall be attached by filing a copy of the writ, together with a description of the property attached, with the county auditor of the county in which the attached real estate is situated.

2. Personal property, capable of manual delivery, shall be attached by taking into custody.

3. Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached by leaving with the president, or other head of the same, or the secretary, cashier or managing agent thereof, a copy

of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ.

4. Debts and credits, and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control such credits, or other personal property, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

Sec. 180. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession or under his control any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ, and a notice that such credits or other personal property or debts, as the case may be, are attached in pursuance of such writ.

Sec. 181. All persons having in their possession or under their control any credits or other personal property belonging to the defendant or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Sec. 182. Any person owing debts to the defendant or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual dilivery to be delivered to the sheriff, on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property containing the amount and description thereof.

Sec. 183. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of the refusal with the writ. The party refusing to give the memorandum may be required to pay the cost of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

Sec. 184. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him shall be retained by him to answer any judgment that may be recovered in the action unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

Sec. 185. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant, as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or if any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment.

2. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of the sales shall be given, and the sales conducted as in other cases of sales on execution.

Sec. 186. If after selling all the property attached by him remaining in his hands and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

Sec. 187. If the execution be returned unsatisfied in whole or in part, the plaintiff may proceed as in other cases upon the return of an execution.

Sec. 188. If the defendant recover judgment against the plaintiff, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands shall be delivered to the defendant or his agent. The order of attachment shall be discharged and the property released therefrom.

Sec. 189. Whenever the defendant has appeared in the action, he may at any time before judgment therein, have the attached property delivered to him, by executing and delivering to the officer holding said property, a bond or undertaking, to be approved by such officer, in a sum at least two hundred dollars more than the amount claimed in plaintiff's affidavit, with at least two sureties, who shall be residents of this territory, to the effect that the parties executing such bond or undertaking will pay to the plaintiff the amount of any judgment, costs and interest thereon, which the plaintiff may recover against the defendant in the action, which bond or undertaking shall run to the plaintiff. Before the officer shall approve the bond or undertaking the sureties to the same shall make and deliver to such officer an affidavit from which it must appear that they are residents of the territory of Washington, and are worth, over and above all debts and liabilities and exemptions in property within this territory, the sum specified in said bond or undertaking; which affidavits shall be endorsed upon or annexed to such bond or undertaking and returned by the officer taking the same, to the clerk of the court issuing the writ of attachment. In case the plaintiff recover judgment in said action, he may bring an action on said bond or undertaking against all or any of the parties executing the same, and shall be entitled to recover the amount recovered against the defendant named in the writ of attachment.

Sec. 190. The sheriff shall return the writ of attachment with the summons, if issued at the same time; otherwise, within twenty days after its receipt, with a certificate of his proceedings endorsed thereon, or attached thereto.

Sec. 191. Whenever property has been taken by an officer, under a writ of attachment, in pursuance of the provisions of this chapter, and it shall be made to appear satisfactorily to the court, or a judge thereof, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in court, to abide the judgment in the action. Such order shall be made only upon notice to the adverse party or his attorney, in case such party have been personally served with a notice in the action.

Sec. 192. The judge of the district court shall have power to make every order in vacation which, by the provisions of this chapter, may be made by the court in term time.

## CHAPTER XIII.

### OF RECEIVERS AND DEPOSITS IN COURT.

Section
193. In what cases, may be appointed.
194. Oath and bond of.
195. Court may order property to be deposited in court.
196. Court may compel obedience to its orders.
Section
197. Deposit not to be loaned.
198. Powers of.
199. When part of claim admitted, defendant to satisfy.

Sec. 193. A receiver may be appointed by the court in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim.
2. In an action between partners, or other persons jointly interested in any property or fund.
3. In all actions where it is shown that the property, fund or rents and profits in controversy are in danger of being lost, removed or materially injured.
4. In an action by a mortgagee for the foreclosure of a mortgage and the sale of the mortgaged property, when it appears that such property is in danger of being lost, removed, or materially injured; or when such property is insufficient to discharge the debt, to secure the application of the rents and profits accruing, before a sale can be had.
5. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights.
6. And in such other cases as may be provided for by law, or when, in the discretion of the court it may be necessary to secure ample justice to the parties, provided that no party or attorney or other person interested in an action, shall be appointed receiver therein.

Sec. 194. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court, execute a bond to such person as the court may direct, conditioned that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

Sec. 195. When it is admitted by the pleading or examination of a party, that he has in his possession, or under his control, any money, or other thing capable of delivery, which being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court.

Sec. 196. Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it, in conformity with the direction of the court.

Sec. 197. Money deposited, or paid into a court in an action, shall not be loaned out, unless, with the consent of all parties having an interest in, or making claim to the same.

Sec. 198. The receiver shall have power, under control of the court, to bring and defend actions, to take and keep possession of the property, to receive rents, collect debts, and generally to do such acts respecting the property, as the court may authorize.

Sec. 199. When the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order by execution or attachment.

## CHAPTER XIV.

### OF ISSUES IN CIVIL ACTIONS.

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200. Issues arise, when. Are of two kinds.
201. Issues of law.
202. Issues of fact.
Section
203. Issues of law and fact in same action; law first tried.

Sec. 200. Issue arises upon the pleading when a fact or conclusion of law is maintained by the one party, and controverted by the other, and are of two kinds:

1. Of law; and
2. Of fact.

Sec. 201. An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

Sec. 202. An issue of fact arises:

1. Upon a material allegation in the complaint, controverted by the answer; or
1. Upon new matter or a set-off, controverted by the reply; or
3. Upon new matter in the reply.

Sec. 203. Issues both of law and fact may arise upon different parts of the pleading in the same action. In such cases, the issues of law shall first tried, unless the court otherwise direct.

# CHAPTER XV.

## OF THE TRIAL OF CIVIL ACTIONS.

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234. If so discharged, case continued.
235. Adjournments from day to day and end of term, effect upon jury.
236. Full jury required to return verdict.
237. Mode of taking verdict.
238. Jury may be polled.
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SEC. 204. An issue of law shall be tried by the court, unless referred as provided in this chapter. An issue of fact shall be tried by a jury, unless a jury trial be waived, or a reference be ordered, as provided in this chapter. The waiver of a jury, or agreement to refer, shall be by stipulation of the parties filed, or the oral consent of parties given in open court and entered in the records: *Provided*, That nothing herein contained shall be so construed as to restrict the chancery powers of the judges, or to authorize the trial of any issue by a jury, when the complaint alleges an equitable claim, and seeks relief solely upon the ground of the equities of the demand made by the pleadings in the action.

SEC. 205. A motion to continue a trial on the ground of the absence of evidence, shall only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require the moving party to state, upon affidavit the evidence which he expects to obtain; and if the adverse party admit that such evidence would be given, and that it be consided as actually given on the trial, or offered and overruled as improper, the trial shall not be continued. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party.

SEC. 206. When the action is called for trial, the clerk shall prepare separate ballots, containing the names of the jurors summoned, who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted, before the jury is complete, or if from any cause, a juror or jurors be excused or discharged, the sheriff, under the direction of the court, shall summon from the bystanders, citizens of the county or district, as many qualified persons as may be necessary to complete the jury. Whenever it shall be requisite for the sheriff to summon more than one person at a time from the bystanders or body of the district or county, the names of the talesmen shall be returned to the clerk, who shall thereupon write the names upon separate ballots and deposit the same in the trial jury box, and draw such ballots separately therefrom, as in the case of the regular panel. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three, and such consent shall be entered by the clerk on the minutes of the trial.

Sec. 207. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and be peremptory or for cause. Each party shall be entitled to three peremptory challenges.

Sec. 208. A peremotory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

Sec. 209. A challenge for cause is an objection to a juror, and may be either:

1. General; that the juror is disqualified from serving in any action; or

2. Particular; that he is disqualified from serving in the action on trial.

Sec. 210. General causes of challenge are:

1. A conviction for a felony.

2. A want of any of the qualifications prescribed by law for a juror.

3. Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror.

Sec. 211. Particular causes of challenge are of two kinds:

1. For such a bias as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

2. For the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the trier in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.

Sec. 212. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

1. Consanguinity or affinity within the fourth degree to either party.

2. Standing in the relation of guardian and ward, attorney and client master and servant or landlord and tenant, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages, of the adverse party, or being surety or bail in the action called for trial, or otherwise, for the adverse party.

3. Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action by the territory against either party, upon substantially the same facts or transaction.

4. Interest on the part of the juror in the event of the action, or the principal question involved therein, excepting always, the interest of the juror as a member or citizen of the county or municipal corporation.

Sec. 213. A challenge for actual bias may be taken for the cause mentioned in the second subdivsion of section two hundred and eleven. But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

Sec. 214. An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

Sec. 215. The jurors having been examined as to their qualifications, first by the plaintiff and then by the defendant, and passed for cause, the peremptory challenges shall be conducted as follows, to-wit:

The plaintiff may challenge one, and then the defendant may challenge one, and so alternately until the peremptory challenges shall be exhausted. The panel being filled and passed for cause, after said challenge shall have been made by either party, a refusal to challenge by either party in the said order of alternation, shall not defeat the adverse party of his full number of challenges, but such refusal on the part of the plaintiff to exercise his challenge in proper turn, shall conclude him as to the jurors once accepted by him, and if his right be not exhausted, his further challenges shall be confined, in his proper turn, to talesmen only.

Sec. 216. The challenges of either party shall be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. For general disqualification.
2. For implied bias.
3. For actual bias.
4. Peremptory.

Sec. 217. The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the facts.

Sec. 218. Upon the trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent may be examined as a witness by either party. If a challenge be determined to be sufficient, or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if determined or found otherwise, it shall be disallowed.

Sec. 219. The challenge, the exception and the denial may be made orally. The judge of the court shall note the same upon his minutes, and the substance of the testimony on either side.

Sec. 220. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them, will well, and truly try, the matter in issue between the plaintiff and defendant, and a true verdict give, according to the law and evidence as given them on the trial.

Sec. 221. When the jury has been sworn, the trial shall proceed in the following order:

1. The plaintiff must briefly state the cause of action and the evidence by which he expects to sustain it. The defendant may in like manner state the defense and the evidence he expects to offer in support thereof, but nothing in the nature of comments or argument shall be allowed in opening the case. It shall be optional with the defendant whether he

states his case before or after the close of the plaintiff's testimony.

2. The plaintiff or the party upon whom rests the burden of proof in the whole action, must first produce his evidence; the adverse party will then produce his evidence.

3. The parties will then be confined to rebutting evidence, unless the court for good reasons, in furtherance of justice, permits them to offer evidence in their original case.

4. When the evidence is concluded, either party may request the judge to charge the jury in writing, in which event no other charge or instruction shall be given, except the same be contained in the said written charge; or either party may request instructions to the jury on points of law, and if the court refuse to give the same, the party requesting may except. Either party shall also be entitled to require of the judge that all interlocutory orders, instructions or rulings upon the evidence during the progress of the trial of a cause, shall be reduced to writing, together with any exceptions that may be made thereto, and the same shall be made a part of the record of the case, and any refusal on the part of the judge trying the cause or making the order to comply with all or any of the provisions of this section shall be regarded error, and entitle the party whose request shall have been refused to a reversal of the judgment on a writ of error: *Provided*, *always*, That the instruction or ruling so requested is pertinent and consistent with the law and evidence of the case, and that such refusal has worked an injury to the party requesting the same.

5. After the conclusion of the evidence and the filing of request for charge in writing or instructions, the plaintiff or party having the burden of proof may, by himself or one counsel, address the court and jury upon the law and facts of the case, after which the adverse party may address the court and jury in like manner by himself and one counsel, or by two counsel, and be followed by the party or counsel of the party first addressing the court. No more than two speeches on behalf of plaintiff or defendant shall be allowed.

6. The court shall then charge the jury upon the law in the case. If no request has been made for said charge to be in writing, or if no instructions have been requested, said charge may be oral; but either party at any time before the jury return their verdict, may except to the same or any part thereof; but no exception shall be regarded by the supreme court, unless the same shall embody the specific parts of said charge to which exception is taken. In charging the jury, the court shall state to them all matters of law necessary for the information of the jury in finding a verdict; and if it become necessary to allude to the evidence, it shall also inform the jury that they are the exclusive judges of all questions of fact.

Sec. 222. Any party may, when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established, or the conclusions of law which he desires to be adjudged, or both. They may be written and handed to the court, or at the option of the court, oral, and entered in the judge's minutes.

Sec. 223. All questions of law including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it.

Sec. 224. All questions of fact other than those mentioned in the section preceding, shall be decided by the jury, and all evidence thereon addressed to them.

Sec. 225. Whenever in the opinion of the court it is proper that the jury should have a view of real property which is the subject of litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place which shall be shown to them by the judge or by a person appointed by the court for that purpose. While the jury are thus absent no person other than the judge, or person so appointed, shall speak to them on any subject connected with the trial.

Sec. 226. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

Sec. 227. If after the formation of the jury, and before verdict, a juror become sick so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn and the trial begin anew; or the jury may be discharged and a new jury then or afterwards formed.

Sec. 228. A juror may be examined by either party as a witness, if he be otherwise competent. If he be not so examined, he shall not communicate any private knowledge or information that he may have of the matter in controversy, to his fellow jurors, nor be governed by the same in giving his verdict.

Sec. 229. After hearing the charge, the jury may either decide in the jury box or retire for deliberation. If they retire, they must be kept together in a room provided for them, or some other convenient place under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the best of his ability, keep the jury thus separate from other persons, without drink, except water, and without food, except ordered by the court. He must not suffer any communication to be made to them, nor make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed on.

Sec. 230. If, while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the county.

Sec. 231. Upon retiring for deliberation, the jury may take with them the pleadings in the cause, and all papers which have been received as evidence on the trial, (except depositions,) or copies of such parts of public records or private documents given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

Sec. 232. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the case, they may require the officer having them in charge to conduct them into court. Upon their being brought into court the information required shall be given in the presence of or after notice to the parties, or their attorneys.

Sec. 233. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

Sec. 234. In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action shall be continued to the next term, unless both parties demand an immediate trial, in which case it shall go to the foot of the trial list.

Sec. 235. While the jury are absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. A final adjournment of the court discharges the jury.

Sec. 236. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall then be called, and if all do not appear, the rest shall be discharged without giving a verdict.

Sec. 237. If the jury appear, they shall be asked by the court or the clerk whether they have agreed upon their verdict, and if the foreman answer in the affirmative, he shall on being required declare the same.

Sec. 238. When a verdict is given and before it is filed, the jury may be polled at the request of either party, for which purpose each shall be asked whether it is his verdict; if any juror answer in the negative the jury shall be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may again be sent out.

Sec. 239. When the verdict is given and is such as the court may receive, and if no juror disagree or the jury be not again sent out, the clerk shall file the verdict. The verdict is then complete and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the journal as of the day's proceedings on which it was given.

## CHAPTER XVI.

### THE VERDICT.

Section
240. General and special verdicts defined.
241. When and how jury may assess value of property, and damages.
242. When verdict general or special at discretion of jury; and when at court's.
243. Special shall control general verdict; when.
244. When jury may assess amount of verdict.

Sec. 240. The verdict of a jury is either general or special. A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

Sec. 241. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property if their verdict be in favor of the plaintiff, or if they find in favor of the defendant and that he is entitled to a return thereof, they may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property.

Sec. 242. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered in the minutes.

Sec. 243. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

Sec. 244. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a set-off for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of the recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the pleadings.

## CHAPTER XVII.

### TRIAL BY THE COURT.

Section
245. How trial by jury may be waived.
246. Decision of court to be filed; how given.

Section
247. Finding of facts equivalent to verdict: new trial.

Sec. 245. Trial by jury may, with the assent of the court, be waived by the several parties in the manner following:

1. By failing to appear at the trial.
2. By written consent, in person or by attorney, filed with the clerk.
3. By oral consent in open court entered in the minutes.

Sec. 246. Upon the trial of an issue of fact by the court, its decisions shall be given in writing and filed with the clerk. In giving the decision, the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly.

Sec. 247. The order of proceedings on a trial by the court shall be the same as provided in trials by jury. The finding of the court upon the facts shall be deemed a verdict, and may be set aside in the same manner and for the same reason as far as applicable, and a new trial granted.

## CHAPTER XVIII.

### TRIAL BY REFEREES.

SECTION
248. Issues may be referred by consent of parties.
249. When a reference may be directed, without consent.
250. Reference may be ordered to one or more.
251. Qualification of a referee.
SECTION
252. Referees, right of challenge to.
253. " trial by, how conducted.
254. " report of, exceptions to, etc.
255. Report to be filed with clerk.
256. Court may affirm or reject in whole or in part.

SEC. 248. All or any of the issues in the action, whether of fact or law, or both, may be referred upon the written consent of the parties; but either party shall have the right in an action at law, upon an issue of fact, to demand a trial by jury.

SEC. 249. Where the parties do not consent the court or judge may upon the application of either, direct a reference in all cases formerly cognizable in chancery in which reference might be made:

1. When the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or,

2. When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or,

3. When a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action; or,

4. When it is necessary for the information of the court in a special proceeding.

SEC. 250. A reference may be ordered to any person or persons not exceeding three, agreed upon by the parties. If the parties do not agree the court or judge may appoint one or more, not exceeding three.

SEC. 251. When the appointment of referees is made by the court or judge, each referee shall be:

1. Qualified as a juror as provided by statute.
2. Competent as juror between the parties.
3. A duly admitted and practicing attorney.

SEC. 252. When the referees are chosen by the court, each party shall have the same right of challenge as to such referees, which shall be made and determined in the same manner and with like effect as in the formation of juries, except that neither party shall be entitled to a peremptory challenge.

SEC. 253. Subject to the limitations and directions prescribed in the order of reference, the trial by referees shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, preserve order, punish all violations thereof upon such trial, compel the attendance of witnesses, and to punish them for non-attendance or refusal to be sworn or testify, as is possessed by the court.

SEC. 254. The report of the referees shall state the facts found, and when the order of reference includes an issue of law, it shall state the conclusions of law separately from the facts. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial and the party offering the same except to the decision rejecting such evidence at the time, the exceptions shall be noted by the referees and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous and inadmissible, require the party at whose instance it was taken and reported, to pay all costs and disbursements thereby incurred.

Sec. 255. The report shall be filed with the clerk. If it be filed in term time, either party may within such time as may be prescribed by the rules of the court, or by special order, move to set the same aside, or for judgment thereon, or such order or proceeding as the nature of the case may require. If the report be filed in vacation the like proceedings may be had at the next term following.

Sec. 256. The court may affirm or set aside the report either in whole or in part. If it affirms the report it shall give judgment accordingly. If the report be set aside, either in whole or in part, the court may make another order of reference as to all or so much of the report as is set aside, to the original referees or others, or it may find the facts and determine the law itself and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of the jury.

## CHAPTER XIX.

### EXCEPTIONS.

Section
257. Exceptions; no particular form of required.
258. May be settled at time of decision complained of, or noted and settled afterward.
259. Settlement of bills of exceptions.
260. After judgment, how settled.

Section
261. When trial judge refuses, supreme court may order exceptions settled.
262. Judge may settle bill after he ceases to hold office.
263. Decision of referee deemed excepted to.

Sec. 257. No particular form of exception is required. The objection must be stated with so much of the evidence or other matter, as is necessary to explain it and no more. But when the exception is to the verdict or decision upon the grounds of the insufficiency of the evidence to sustain it, the objection must specify the particulars in which such evidence is alleged to be insufficient.

Sec. 258. A bill containing the exception to any ruling may be presented to the judge, at the time the ruling is made, or the exception may be entered on the judge's minutes and afterward settled. The bill must be conformable to the truth, or be at the time corrected until it be so, and signed by the judge and filed with the clerk.

Sec. 259. If a bill is not presented at the time of ruling, a bill containing the exceptions or any of them, relating to any ruling had up to the time of the entry of judgment, may upon three days' notice to the adverse party, at any time after such ruling is made, and within ten days after the entry of judgment or such other time as may be fixed by the court or judge, be presented to the judge and settled.

Sec. 260. Exceptions to any decisions made after judgment, may be presented to the judge at the time of such decision, and may be settled or noted as provided in section two hundred and fifty-eight, and a bill thereof may be presented and settled afterwards as provided in section two hundred and fifty-nine, and within like periods after entry of the order upon appeal, from which such decision is reviewable.

Sec. 261. If the judge, in any case, refuse to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the supreme court, to approve the same. The application may be made in the mode and manner and under such regulations as that court may prescribe, and the bill when proven, must be certified by a justice thereof as correct, and filed with the clerk of the court in which the action was tried, and when so filed it has the same force and effect as if settled by the judge who tried the cause.

Sec. 262. If the judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may nevertheless settle such bill or the party may as provided in the preceding section, apply to the supreme court to prove the same.

Sec. 263. When a cause has been tried by the court or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to, on a motion for a new trial, or on appeal, without any special notice that an exception is taken thereto.

## CHAPTER XX.

### ARBITRATION AND AWARD.

SECTION
264. Suits, &c., except title to real estate, may be submitted to.
265. Agreement to arbitrate; requisites of.
266. Arbitrators to be sworn; award to whom and how delivered; judgment upon.
267. Compensation of, costs, etc.
268. Exception to award, for what may be taken.

SECTION
269. Court may refer cause back to referees, and on failure to correct, shall be possessed of the case.
270. Powers of arbitrators.
271. Laws as to evidence and witnesses govern.
272. Proceedings for contempt.
273. Taxation of costs, and execution.
274. Award, and transcript of judgment thereon.

Sec. 264. All persons desirous to end, by arbitration, any controversy, suit or quarrel, except such as respect the title to real estate, may submit their difference to the award or umpirage of any person or persons mutually selected.

Sec. 265. Said agreement to arbitrate shall be in writing, signed by the parties, and may be by bond in any sum, conditioned that the parties entering into said submission shall abide the award.

Sec. 266. The said arbitrators shall be duly sworn to try and determine the cause referred to them, and a just award make out, under the hands and seals of a majority of them, agreeably to the terms of the submission. Said award, together with the written agreement to submit, shall be sealed up by the arbitrators and delivered to the party in whose favor it shall be made, who shall deliver the same, without breaking the seal, to the clerk of the district court of the district including the county wherein said arbitration is held, who shall enter the same on record in his office. A copy of the award, signed by said arbitrators, or a majority of them, shall also be delivered to the party in whose favor it is rendered, who shall, if the matter be not settled, serve a copy of the same on the adverse party at least twenty days before the commencement of the next term of the said district court, and if no exceptions be filed against the same, by or before the second day of said term, the judgment of the court shall be entered as of a jury, and execution may issue therefor and the same proceedings upon said award, with like effect as though said award were the verdict had as in civil actions.

Sec. 267. The arbitrators chosen under the provisions of this chapter shall each be allowed three dollars per day, to be taxed with other costs of suit; but if either party fail to appear on the day agreed upon for the arbitrators to meet, said party shall be liable for all costs accruing that day unless his absence was unavoidable, and shall be so established to the satisfaction of said arbitrators. And any arbitrator failing to attend on the day appointed, unless delayed by sickness or unavoidable accident, shall forfeit and pay the sum of five dollars to the school fund of the county, to be recovered by action before a justice of the peace, in the name of the county commissioners of the county.

Sec. 268. The party against whom an award may be made, may except in writing thereto for either of the following causes:

1. That the arbitrators or umpire misbehaved themselves in the case.
2. That they committed an error in fact or law.
3. That the award was procured by corruption or other undue means.

Sec. 269. If upon exceptions filed it shall appear to the said district court that the arbitrators have committed error in fact or law, the court may refer the cause back to said arbitrators, directing the amendment of said award forthwith, returnable to the current term of said court, and on the failure so to correct said proceedings, the court shall be possessed of the case and proceed to its determination.

Sec. 270. Arbitrators, or a majority of them, shall have power:

1. To compel the attendance of witnesses duly notified by either party and to enforce from either party the production of all such books, papers and documents as they may deem material to the cause.
2. To administer oaths or affirmations to witnesses.
3. To adjourn their meetings from day to day, or for a longer time, and also from place to place, if they think proper.
4. To decide both the law and the fact that may be involved in the cause submitted to them.

Sec. 271. The laws in force in this territory relating to evidence and the manner of procuring the attendance of witnesses, shall govern in arbitrations.

Sec. 272. The law governing proceedings for contempt, in the trial of cases before justices of the peace, so far as the same may be applicable, shall apply to the proceedings before arbitrators.

Sec. 273. The costs of witnesses, and other fees in the case, shall be taxed against the losing party; said fees shall be indorsed upon the award, and when said award is affirmed as the judgment of the district court, execution shall issue therefor as for costs in civil actions.

Sec. 274. Such award, when so affirmed, shall be in all respects like any other judgment of the district court, and a transcript of such judgment, or execution issued thereon, recorded in the county auditor's office in the same manner as other judgments, shall be a lien upon real estate in said county.

# CHAPTER XXI.

## NEW TRIAL.

SECTION
275. A new trial defined.
276. Causes for which a new trial may be granted.
277. If damages allowed equal to injury sustained shall be denied.
278. Facts on application to be stated by affidavit.
279. Notice of motion for; when to be given; counter affidavits may be used; when to be filed.
280. Upon trials by court, when motion to be filed.
281. Grounds to be clearly specified.
282. When counter affidavits may be produced.

SEC. 275. A new trial is a re-examination of an issue in the same court after a trial and decision by a jury, court or referees.

SEC 276. The former verdict or other decision may be vacated and a new trial granted, on the motion of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which such party was prevented from having a fair trial.

2. Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot; such misconduct may be proved by the affidavits of one or more of the jurors.

3. Accident or surprise which ordinary prudence could not have guarded against.

4. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.

5. Excessive damages, appearing to have been given under the influence of passion or prejudice.

6. Error in the assessment of the amount of recovery, whether too large or too small, when the action is upon a contract, or for the injury or detention of property.

7. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

8. Error in law occurring at the trial and excepted to at the time by the party making the application.

SEC. 277. A new trial shall not be granted on account of the smallness of damages in an action for an injury to the person or reputation, nor in any other action where the damages shall equal the actual pecuniary injury sustained.

SEC. 278. The motion for a new trial shall state the grounds or causes for which a new trial is asked, and if made for any of the causes mentioned in the first, second, third or fourth subdivision of section two hundred and seventy-six, the facts upon which it is based may be shown by affidavit.

SEC. 279. Notice of an intended motion for a new trial shall be given in one day after the verdict or other decision is made, if rendered in term time, and the motion shall be served on the adverse party or his attorney, and with the affidavits (if any) shall be filed with the clerk in two days thereafter; when affidavits are filed by the moving party, the adverse party shall have two days in which to file counter affidavits; the motion shall be heard and determined at the term when made, unless the court continue the same, or grant further time for the hearing: *Provided*, That if the term at which such verdict or decision is rendered, adjourn before said motion can be heard the judge shall fix a time and place when the same can be heard.

SEC. 280. Upon a trial by the court when the decision is given in vacation, a motion for a new trial shall be filed within twenty days from the time of filing such decision. If the next regular term of said court shall commence within less than twenty days from the time of filing such decision, then such motion shall be filed by the first day of said term. In either case, the adverse party may, within four days after the filing of the motion, file counter affidavits where the same are allowed.

SEC. 281. In all cases of motion for a new trial, the grounds thereof shall be clearly specified, and no cause of new trial, not so stated, shall be considered or regarded by the court.

SEC. 282. If the motion be supported by affidavits, counter affidavits may be offered by the adverse party, and if the cause be newly discovered evidence, the affidavits of any witness or witnesses, showing what their testimony will be, shall be produced, or good reasons shown for their non-production.

## CHAPTER XXII.

### JUDGMENT IN GENERAL.

SECTION
283. Definitions.
284. Against whom may be given; extent thereof.
285. In actions against several defendants.

SEC. 283. A judgment is the final determination of the rights of the parties in the action.

SEC. 284. Judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

SEC. 285. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

## CHAPTER XXIII.

### JUDGMENT OF NON-SUIT.

SECTION
286. Action; when may be dismissed.
287. In all other cases, judgment shall be on the merits.
288. Non suit shall not bar another action.

SEC. 286. An action may be dismissed, or a judgment of non-suit entered in the following cases:

1. By the plaintiff himself, at any time, either in term time or in vacation, before the jury retire to consider their verdict, unless set-off be interposed as a defense, or unless the defendant sets up a counter claim to the specific property or thing which is the subject matter of the action.
2. By either party, upon the written consent of the other.
3. By the court, when the plaintiff fails to appear on trial, and the defendant appears and asks for a dismissal.

4. By the court, when upon the trial and before the final submission of case, the plaintiff abandons it.

5. By the court, on the refusal or neglect of the plaintiff to make the necessary parties, after having been ordered by the court.

6. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence.

7. By the court, for disobedience of the plaintiff to an order concerning the proceedings in the action.

8. By the court. upon motion of the defendant, when upon the trial, the plaintiff fails to prove a sufficient cause for the jury.

Sec. 287. In every case other than those mentioned in the last section, the judgment shall be rendered on the merits.

Sec. 288. When a judgment of non-suit is given, the action is dismissed; but such judgment shall not have the effect to bar another action for the same cause.

## CHAPTER XXIV.

### JUDGMENT ON FAILURE TO ANSWER. IN WHAT CASE JUDGMENT MAY BE HAD UPON FAILURE TO ANSWER.

Section
289. In actions on contacts for payment of money only, defaults and proceedure.
289. In actions for other relief and for damages.
Section
289. Where service is by publication.
290. Court may set aside default, when.

Sec. 289. Judgment may be had if the defendant fail to answer to the complaint, as follows:

1. In any action arising on contract for the recovery of money only, the plaintiff may file with the clerk proof of personal service of the summons and complaint on one or more of the defendants. The court shall thereupon enter judgment for the amount claimed, against the defendant or defendants, or against one or more of the several defendants in the cases provided for in section sixty-eight. Where the defendant, by his answer, in any such action, shall not deny the plaintiff's claim, but shall set up a counter claim amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of said claim over the said counter claim.

2. In other actions the plaintiff may, upon the like proof, apply to the court after the expiration of the time for answering, for the relief demanded in the complaint. If the taking of an account, or of the proof of any fact be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. Where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if to determine the amount of damages, the examination of a long account be necessary, by a reference as above provided. If the defendant give notice of appearance in the action, before the expiration of the time for answering, he shall be entitled to five days' notice of the time and place of application to the court for the relief demanded in the complaint.

3. In action where the service of the summons was by publication, the plaintiff, upon the expiration of the time for answering, may, upon proof of service by publication, apply for judgment; and the court must

thereupon require proof of the demand mentioned in the complaint, and must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover, or for such other relief as he may be entitled to.

Sec. 290. The court may, in its discretion, before final judgment, set aside any default, upon affidavit showing good and sufficient cause, and upon such terms as may be deemed reasonable.

## CHAPTER XXV.

### JUDGMENT BY CONFESSION.

Section
291. When may be given.
292. How corporations or minors can confess judgment.
293. When, by one of several defendants, jointly liable.
Section
294. Requisites of confession of.
295. May be entered without action, in what cases.
296. Statement to be verified; what shall contain.
297. To be presented to judge and endorsed by him; further proceedings.

Sec. 291. On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint.

Sec. 292. When the action is against the Territory, a county or other public corporation therein, or a private corporation, or a minor, the confession shall be made by the person who at the time sustains the relation to such Territory, corporation, county or minor, as would authorize the service of a notice upon him; or in the case of a minor, if a guardian for the action has been appointed, then by such guardian; in all other cases the confession shall be made by ths defendant in person.

Sec. 293. When the action is upon a contract and against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants, against all the defendants thus jointly liable, whether such defendants have been served or not, to be enforced only against their joint property and against the joint and separate property of the defendant making the confession.

Sec. 294. The confession and assent thereto shall be in writing and subscribed by the parties making the same, and acknowledged by each before some officer authorized to take acknowledgments of deeds.

Sec. 295. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter.

Sec. 296. A statement in writing shall be made, signed by the defendant and verified by his oath, to the following effect:

1. It shall authorize the entry of judgment for a specified sum.

2. If it be for money due or to become due, it shall state concisely the facts out of which the indebtedness arose, and shall show that the sum confessed to be due, is justly due or to become due.

3. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same.

Sec. 297. The statement must be presented to the district court or a judge thereof, and if the same be found sufficient, the court or judge shall endorse thereon an order that judgment be entered by the clerk; whereupon it may be filed in the office of the clerk, who shall enter a judgment for the amount confessed, with costs. Execution may be issued and enforced thereon in the same manner as upon judgments in other cases.

## CHAPTER XXVI.

### SUBMITTED CASES.

SECTION
298. Parties having differences may present same to court, how.
299. Judgment upon submission; costs.
300. Judgment may be enforced as other cases.

SEC. 298. Parties to a question in difference which might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon as if an action were pending.

SEC. 299. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceedings prior to the trial. The case, the submission and a copy of the judgment shall constitute the judgment roll.

SEC. 300. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

## CHAPTER XXVII.

### OF THE MODE OF TAKING AND ENTERING JUDGMENTS.

SECTION
301. Judgment in trials by jury, when to be entered.
302. When case is reserved for argument.
303. Judgment for excess, in set-off.
304. Judgment for possession; restitution of property.
305. Clerk to enter in journal determination of action.
306. Clerk to keep all the papers in the case; how.
307. Each clerk to keep an execution docket.
308. Within what time, and what to be entered therein.
309. To enter transcripts of judgments of other courts.
310. Clerk shall enter all subsequent proceedings.
311. Clerk to prefix index to docket.
312. County auditors to record transcripts of judgment, how.
313. Clerk to keep book of levies, what shall contain, index to be prefixed.
314. Summons to joint debtors, not originally served.
315. What summons shall contain.
316. Plaintiff must file affidavit of amount unsatisfied.
317. Answer of defendant.
318. What shall constitute the allegations to be tried.
319. Verdict cannot exceed amount unsatisfied and interest.

SEC. 301. When a trial by jury has been had, judgment shall be entered in conformity to the verdict, at the term during which it is rendered, unless an affidavit or statement of grounds for a new trial shall be filed, or unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

SEC. 302. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument, at the first term thereafter.

SEC. 303. If a set-off established at the trial, exceed the plaintiff's demand so established, judgment for the defendant shall be given for the excess; or if it appear that the defendant is entitled to any affirmative relief, judgment shall be given accordingly.

SEC. 304. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

SEC. 305. All judgments shall be entered by the clerk, subject to the direction of the court, in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

SEC. 306. Immediately after entering the judgment, the clerk shall attach all the papers in the case and keep them in his office.

SEC. 307. Every clerk shall keep in his office a well-bound book, to be called the execution docket, which shall be a public record and open during the usual business hours to all persons desirous of inspecting it.

SEC. 308. Within twenty days after the close of any term of the court, the clerk shall enter in said execution docket, a statement of each final judgment rendered at such term, and shall, at the request of the judgment creditor or his attorney, furnish a transcript of said judgment to said judgment creditor, and upon the filing of said transcript in the office of the county auditor, it shall be a lien upon all real estate of said judgment debtor, in the county where such transcript shall be filed, for the period of five years from the date said judgment was rendered. And said lien shall attach from the day of the date of said judgment, if said transcript shall have been filed within the said twenty days. And in case an attachment has been levied upon any real estate, then from the levy of the attachment. The fees for making and filing such transcript shall be paid by the judgment creditor, and be taxed as costs against the judgment debtor, and be collected as other costs in the case. Said statements and transcripts shall contain:

1. The names at length of all the parties.
2. The date of the judgment and against whom rendered.
3. The amount or nature of the judgment and costs.
4. An abstract of the costs of each party, and to whom belonging.

SEC. 309. The clerk shall also enter in his execution docket a minute, in like manner, of any transcript of a judgment from the supreme court, or from any district court of the territory, or from a justice of the peace, when the same are presented to him for that purpose, as shall be provided by law. He shall in like manner, at the instance of the judgment creditor, furnish to any county auditor's office, any certified transcript of said judgment, for filing therein, the fees whereof shall be paid by the party requesting such transcript, but taxable as other costs in the case.

SEC. 310. He shall leave space on the same page, if practicable, with each case, in which he shall enter, in the order in which they occur, all the proceedings subsequent to the judgment in said case, until its final satisfaction, including the time when and to what county the execution is issued and when returned, and the return or substance thereof. When the execution is levied on personal property, which is returned unsold, the entry shall be: "Levied (noting the date) on property not sold." When any sheriff shall furnish the clerk with a copy of any levy upon real estate on any judgment, the minutes of which are entered in his execution docket, the entry shall be: "Levied upon real estate," noting the date, and shall refer to the page upon the book of levies where the same is entered, as is hereinafter provided. When any execution issued to any other county is returned, levied upon real estate in such county, the entry in the docket shall be: "Levied on real estate of ———, in ——— county," noting the date, county, and defendant whose estate is levied upon, and when the money is made, or any part thereof, the amount and time when made shall be entered; also when a writ of error has been taken, or the judgment is appealed, modified, discharged or in any manner satisfied, the facts in respect thereto shall be entered. The parties interested may also assign or discharge such judgment on such execution docket. When the judgment is fully satisfied in any way, the clerk shall write the word "satisfied," in large letters across the face of the entry of such judgment.

SEC. 311. The clerk shall prefix to the execution docket a full and correct alphabetical index, both direct and inverse, containing the names of all persons parties to judgments, plaintiffs and defendants, in separate columns.

SEC. 312. The auditor of each county shall keep in his office a well bound book, which shall be a public record, open to inspection at all reasonable hours, in which he shall enter all transcripts of judgments from the supreme or district courts, presented to him for that purpose, and when a judgment is satisfied he shall write across the face in large letters the word "satisfied."

SEC. 313. The clerk shall also keep in his office a well bound book, to be called a book of levies, which shall be a public record and open during the usual business hours to all persons desirous of inspecting the same, in which he shall enter all levies upon real estate in his county, when delivered to him by the sheriff, as provided by law. An alphabetical index shall be prefixed to the book of levies, containing the names of all persons upon whose real estate such levies have been made, and when such levies are discharged in any manner, an entry thereof shall be made in the margin of the book of levies where the levy is recorded.

SEC. 314. When a judgment is recorded against one or more of several persons jointly indebted upon an obligation by proceeding as provided in section sixty-eight of this act, such defendants who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

SEC. 315. The summons, as provided in the last section, must describe the judgment, and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner and returnable within the same time, as the original summons. It is not necessary to file a new complaint.

SEC. 316. The summons must be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment, or some part thereof, remains unsatisfied, and must specify the amount due thereon.

Sec. 317. Upon the service of such summons and affidavit, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently to the taking of the judgment, or he may deny his liability on the obligation upon which the judgment was rendered, except a discharge from such liability by the statute of limitations.

Sec. 318. If the defendant in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was rendered, a copy of the original complaint and judgment, the summons with the affidavit annexed, and the answer constitute such written allegations.

Sec. 319. The issue formed may be tried as in other cases, but when the defendant denies in his answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must not exceed the amount remaining unsatisfied on such original judgment, with interest thereon.

## CHAPTER XXVIII.

### LIEN OF JUDGMENTS.

Section

320. Rate of interest which judgments shall bear.
321. Judgment a lien on real estate, how long
322. Appeal, etc., not to affect lien, upon personal property, from actual levy.

Sec. 320. Judgments shall bear the legal rate of interest from date thereof, except when rendered upon an express contract in writing, wherein a different rate of interest is agreed upon by the parties, in which case the judgment shall, until paid and satisfied, bear the same rate of interest specified in such written contract.

Sec. 321. The real estate of any judgment debtor, and such as he may acquire, shall be held and bound to satisfy any judgment of the district or supreme court, or any judgment of a justice of the peace, authorized by law to be levied upon real estate, for the period of five years from the day on which said judgment was rendered, said lien to commence as follows: On judgments of the district court of the district including the county or counties in which real estate of the judgment debtor is situated, from the date of the rendition, but within twenty days from the date of such rendition, a transcript thereof certified by the clerk of the said district court, shall be filed and recorded in the county auditor's office of the county where the said lands are situated, and if not so filed within said period of twenty days, the lien of said judgment shall be suspended until the filing of said transcript. From and after said filing of transcript by the county auditor of any county in the territory, such judgment shall be a lien upon all real estate of the judgment debtor in such county for the period of five years, commencing from the date on which said judgment was rendered. In all other judgments which are by law a lien upon real estate, the lien upon lands in any particular county commences and attaches from the date of filing the transcript in the county auditor's office of said county, and continues for the period of five years from the date of rendition of the judgment.

Sec. 322. An appeal to the supreme court, writ of error, or stay of execution shall not affect any existing lien; and in all cases of an appeal or writ of error, the date of final judgment in the supreme court shall be the time from which said five years shall commence to run. Personal property shall only be held from the time it is actually levied upon.

## CHAPTER XXIX.

### ON REVIVAL AND CONTINUANCE OF JUDGMENTS.

SECTION
323. Motion for, who may make and proceedure.
324. Proof must be furnished of existing debt, order of court, judgment, etc.

SEC. 323. If any judgment shall remain unsatisfied in whole or in part, at the end of five years after the date of its rendition, the lien thereof may be revived and continued, as in this section provided:

1. The judgment creditor, his assignee, or the party to whom said judgment is due and payable, shall file a motion with the clerk of the court where judgment is entered, to revive and continue the lien of the same, with leave to issue an execution. The motion shall state the names of the parties to the judgment, the date of its entry, the amount claimed to be due thereon, or the particular property, of which the possession was thereby adjudged to such party, remaining undelivered. The motion shall be subscribed and verified in the same manner as an original complaint.

2. At any time after filing such motion, the party may cause notice to be served on the judgment debtor in like manner and with like effect as a summons; said notice shall be attached to a copy of said motion, by the clerk of the court, and be served by the sheriff or other officer as an original summons. It shall cite the judgment debtor to appear and show cause why the said motion should not be allowed. The time in which the judgment debtor shall be required to appear, shall be the same as is prescribed for answer to a complaint, and the law applicable to service of a summons, shall apply to the service of such notice. In case the judgment debtor be dead, the notice may be served upon his legal representatives.

3. The judgment debtor, or in case of his death. his representatives, may file an answer or demurrer to such motion within the time allowed by law to answer a complaint, alleging any defense to such motion which may exist. If no answer be filed within the time prescribed, the motion shall be allowed as of course. The moving party may demur or reply to the answer. The pleadings shall be subscribed and verified, and the proceedings concluded as in original actions.

4. The word "representatives," in this section shall be deemed to include any or all of the persons in whose possession property of the judgment debtor may be which is liable to be taken and sold or delivered in satisfaction of the execution, and not otherwise.

5. The order shall specify the amount due upon such unsatisfied judgment for which execution is to issue, or the particular property, possession of which is to be delivered; it shall be entered in the journal and docketed as a judgment, and a final record shall be made of the proceedings in the same manner as a judgment.

SEC. 324. Such motion shall not be granted unless it be established by oath of the party or other satisfactory proof that the judgment, or some part thereof remains unsatisfied. The order of court granting such leave shall operate as a revival of the judgment for amount found due at the time of such revival, and the same shall be and continue a lien upon real estate of the judgment debtor for a period of five years from and after the date of such order, in like manner with the original judgment: *Provided*, That a transcript thereof shall within twenty days be filed in the office of the county auditor of the county where the lands lie of such judgment debtor, or said lien shall be suspended till such transcript be filed. Revived judgments shall bear the same interest and be in all respects similar to original judgments, as to lien and enforcement or collection.

## CHAPTER XXX.

### OF EXECUTIONS.

SECTION
326. Execution within five years
327. How judgments may be enforced.
328. Four kinds of executions. Order to collect costs.
329. Form and requisites of an execution.
SECTION
330. To what counties execution may be issued.
331. Returnable within sixty days.
332. Execution against the person.
333. What property liable to execution.
334. Assignment of judgment.

SEC. 325. The party in whose favor judgment is given, may at any time, within five years thereafter, have a writ of execution issued for its enforcement, as prescribed in this chapter; if the period of five years shall have elapsed, an execution shall not issue thereafter, without such judgment shall have been revived as provided in the next preceding chapter, on revival and continuance of judgment.

SEC. 326. When a judgment requires the payment of money, or the delivery of real or personal property, the same may be enforced in those respects by execution, as provided in this chapter. When it requires the performance of any other act, a certified copy of the judgment may be served on the party against whom it is given, or the person or officer who is required thereby, or by law, to obey the same, and a writ shall be issued commanding him to obey or enforce the same. If he refuses, he may be punished by the court as for a contempt.

SEC. 327. There shall be four kinds of execution; one against the property of the judgment debtor, another against his person, the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same, and the fourth, commanding the enforcement of or obedience to any special order of the court. And in all cases there shall be an order to collect the costs.

SEC. 328. The writ of execution shall be issued in the name of the United States, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff of the county in which the property is situated, or coroner, when the sheriff is a party, or interested, and shall intelligibly refer to the judgment, stating the court, the district or county where judgment was rendered, the names of the parties, the amount of the judgment, if it be for money, and the amount actually due thereon, and shall require substantially as follows:

1. If it be against the property of the judgment debtor it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of the debtor, and if sufficient personal property cannot be found, out of his real property, upon which the judgment is a lien.

2. If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property.

3. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of the county, until he shall pay the judgment, with interest, or be discharged according to law.

4. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the sheriff to satisfy any charges, damages, or rents and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, shall be specified therein. If a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of his real property. When it is to enforce obedience to any special order, it shall particularly command what is required to be done, or to be omitted. When the nature of the case shall require it, the execution may embrace one or more of the requirements above mentioned. And in all cases, the execution shall require the collection of all interest, costs, and increased costs thereon.

SEC. 329. When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in this territory, but it shall not be issued in the first instance, to the sheriff of any county out of the district in which the judgment is rendered, unless the plaintiff or his attorney, shall first make and file with the clerk an affidavit that the defendant has not subject to execution, sufficient property, real or personal, in any county in said district, to satisfy the judgment, but that he has property subject to execution in some other county or counties. But after an execution has been returned "no property found" in the district or county in which judgment was rendered, an execution may be issued to any county outside of said district, upon the plaintiff or his attorney making oath that the defendant has property subject to execution in such county. When it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated.

SEC. 330. The sheriff shall indorse upon the writ or execution, the time when he received the same, and such execution shall be returnable within sixty days after its date, to the clerk who issued the same. And no sheriff shall retain any moneys collected on execution, more than twenty days, before paying the same to the clerk of the court who issues the writ, under penalty of twenty per cent. on the amount collected, to be paid by the sheriff; the one-half to the party to whom the judgment is payable, and the other half to the county commissioners of the county wherein the action was brought, for the use of the school fund of said county. And the clerk shall immediately after the receipt of any moneys collected on any judgment, notify the party to whom the same is payable, and pay over the amount to the said party on demand. On failure to so notify and pay over, without reasonable cause shown for delay, the clerk shall forfeit and pay the same penalty, to the same parties, as is above prescribed for the sheriff.

Sec. 331. If the action be one in which the defendant may be arrested, as provided by law, an execution against the person of the judgment debtor may be issued to any county in the territory: *Provided*, That the sheriff shall not arrest the defendant if he shall deliver to him the property subject to levy, sufficient to satisfy said judgment.

Sec. 332. A person arrested on execution, shall be imprisoned within the jail, or the liberties thereof, and kept at his own expense until satisfaction of the execution, or his legal discharge; but the plaintiff shall be liable to the sheriff, in the first instance, for such expense, as in other cases of arrest in the same manner, and to the same extent as therein prescribed.

Sec. 333. All property, real and personal, of the judgment debtor, not exempt by law, shall be liable to execution.

Sec. 334. In all cases in which a judgment has been recovered in any of the courts of this territory, which shall have been assigned to any person, execution may issue in the name of the assignee, upon the assignment being recorded in the execution docket by the clerk of the court in which the judgment is recovered, and the provisions of this section shall extend to all judgments heretofore recovered as well as to those hereafter to be recovered.

## CHAPTER XXXI.

### OF STAY OF EXECUTION.

SECTION
335. In judgments of supreme court, and district-court.
336. Bond for stay of execution.
337. Judgment upon stay bond.
SECTION
338. Qualification of sureties.
339. Defendant may have stay for unexpired term.
340. Bonds where filed.

Sec. 335. Stay of execution shall be allowed on judgments rendered in the supreme court and district court, as follows:

In the supreme court:

1. On all sums under five hundred dollars, thirty days.
2. On all sums over five and under fifteen hundred dollars, sixty days.
3. On all sums over fifteen hundred dollars, ninety days.

On judgments rendered in the district court:

1. On all sums under three hundred dollars, two months.
2. On all sums over three hundred and under one thousand dollars, five months.
3. On all sums over one thousand dollars, six months.

Sec. 336. Before any execution shall be stayed under the provisions of this chapter, the defendant shall give bond to the opposite party, in double the amount of the judgment and costs, with surety to the satisfaction of the clerk, conditioned to pay said judgment, interest, costs and increased costs, at the expiration of the period of said stay.

Sec. 337. If the judgment is not satisfied, at any time after the expiration of the period for which execution has been stayed, the plaintiff, at any subsequent term of the court from which the execution issued, may, upon motion supported by an affidavit that such judgment or any part thereof is unpaid, and stating how much still remains due thereon, have jugdment against the sureties upon said bond, for the balance remaining due, and have an execution therefor, upon which no stay shall be allowed.

SEC. 338. The sureties upon a bond for stay of execution shall possess the same qualifications, and justify in the same manner as bail upon arrest in civil actions.

SEC. 339. When execution has not been stayed, and execution issues before the time has elapsed for which it might have been stayed, as is herein provided, the defendant may have stay for the balance of the time, upon giving the proper bond and surety, which bond and surety shall be approved by and justified before the sheriff.

SEC. 340. Bonds required by this act shall, when taken, be lodged with the clerk of the court where the judgment was rendered, and placed on file in his office.

## CHAPTER XXXII.

### EXEMPTION.

SECTION
341. Separate property and earnings of wife not liable for husband's debts.
342. Homestead, what shall be. Value $1000.
343. Surviving husband or wife entitled to homestead.
344. Homestead may be mortgaged, how.
345. Proceeding if creditor believes homestead worth over $1000.
346. Subsequently purchased homestead exempt.
347. Schedule of personal property exempt, except for judgment for price.
348. Of waiver of exemption.
349. Trial of whether property is exempt.

SEC. 341. All real and personal estate belonging to any married woman at the time of her marriage, and all which she may have acquired subsequently to such marriage, or to which she shall hereafter become entitled in her own right, and all her personal earnings, and all the issues, rents and profits of such real estate, shall be exempt from attachment and execution upon any liability or judgment against the husband, so long as she or any minor heir of her body shall be living: *Provided*, That her separate property shall be liable for debts owing by her at the time of her marriage.

SEC. 342. There shall be also exempt from execution and attachment to every householder, being the head of a family, a homestead not exceeding in value the sum of one thousand dollars, while occupied as such by the owner thereof, or his or her family. Said homestead may consist of a house and lot or lots in any city, or of a farm, consisting of any number of acres, so that the value of the same shall not exceed the aforesaid sum of one thousand dollars. Such homestead may be selected at any time before sale.

SEC. 343. When any person dies seized of a homestead, leaving a widow, or husband, or minor children, the survivors shall be entitled to the homestead, but in case there be neither surviving husband, widow or children, the said homestead shall be liable for the debts of the deceased.

SEC. 344. Nothing herein contained, shall be construed to prevent the owner of a homestead from voluntarily mortgaging the same; but no mortgage shall be valid against the wife of any mortgagor who may be occupying said homestead with him, unless she shall freely and voluntarily, separate and apart from her husband, sign and acknowledge said mortgage; and the officer taking the acknowledgment shall fully apprise her of her rights and the effect of signing such mortgage.

SEC. 345. When any creditor shall be of opinion that any homestead claimed under the provisions of this act is of greater value than one thousand dollars, on filing an affidavit to that effect with the clerk of the district court, the judgment creditor may proceed against said homestead as in other cases of real estate, and if said homestead shall sell for over one thousand dollars and costs, the surplus shall be applied to the payment of the judgment of said creditor, and in all such cases the sum of one thousand dollars, free of charge or expense, shall be paid to the owner of the homestead; and in case the said homestead shall not sell for more than one thousand dollars and costs, the person instituting the proceeding shall pay all costs of such proceeding, and the said proceeding cease and not affect or impair the rights of the owner of the homestead.

Sec. 346. In case of the sale of said homestead, any subsequent homestead acquired by the proceeds thereof, shall also be exempt from attachment and execution, nor shall any judgment or other claim against the owner of such homestead be a lien against the same in the hands of a bona fide purchaser for a valuable consideration.

Sec. 347. The following property shall be exempt from execution or attachment, except as is hereinafter specially provided:

1. All wearing apparel of every person and family.
2. All private libraries, family pictures and keepsakes.
3. To each householder, one bed and bedding, and one additional bed and bedding for every two members of the family, and other household goods and utensils and furniture, not exceeding one hundred and fifty dollars coin in value.
4. To each householder, two cows with their calves, five swine, two stands of bees, twenty-five domestic fowls, and provisions and fuel for the comfortable maintenance of such householder and family for six months: *Provided*, That in case such householder shall not possess, or shall not desire to retain the animals named above, he may select from his property and retain other property, not to exceed one hundred and fifty dollars coin in value.
5. To a farmer, one span of horses, or mules, with harness, or two yoke of oxen with yokes and chains, and one wagon; also farming utensils actually used about the farm, not exceeding in value two hundred dollars in coin.
6. To a mechanic, the tools and instruments used to carry on his trade for the support of himself and family; also material not exceeding in in value five hundred dollars in coin.
7. To a physician, his library, not to exceed in value five hundred dollars in coin; also one horse and buggy, the instruments used in his practice, and medicines not exceeding in value two hundred dollars in coin.
8. To attorneys, clergymen, and other professional men, their libraries not exceeding five hundred dollars in coin value; also office furniture, fuel and stationery not exceeding in value two hundred dollars in coin.
9. All firearms kept for the use of any person or family.
10. To any person a canoe, skiff or small boat, with its oars, sails and rigging not exceeding in value fifty dollars in coin.
11. To a person engaged in lightering for his support or that of his family, one or more lighters, barges or scows, and a small boat with oars, sails and rigging, not exceeding in the aggregate two hundred and fifty dollars in coin value.

12. To a teamster or drayman engaged for his support and that of his family, his team. The word team in this subdivision means a span of horses, harness, and one wagon or dray.

13. To a person engaged in the business of logging, for his support and that of his family, three yoke of work cattle and their yokes; and axes, chains, implements for the business and camp equipments, not exceeding three hundred dollars coin in value.

14. A sufficient quantity of hay, grain or feed to keep the animals mentioned in the several subdivisions of this chapter for six weeks. But no property shall be exempt from an execution issued upon a judgment for the price thereof, or any part of the price thereof, or for any tax levied thereon.

Sec. 348. This chapter shall not be so construed as to prevent any single man, or married man, his wife joining him, from waiving, by agreement in writing, the benefit of this act: *Provided*, That any agreement of waiver made by a husband and wife, shall be witnessed and acknowledged as required in case of a deed conveying real estate: *And provided also*, That nothing in this chapter shall be construed to exempt from attachment or execution the property, real or personal, of non-residents or a person who has left or is about to leave the territory, with the intent to defraud his creditors.

Sec. 349. When a debtor claims personal property as exempt he shall deliver to the officer making the levy an itemized list of all the personal property owned or claimed by him, including money, bonds, bills, notes, claims and demands, with the residence of the person indebted upon the said bonds, bills, notes, claims and demands, and shall verify such list by affidavit. He shall also deliver to such officer a list by separate items of the property he claims as exempt. If the husband be absent or incapable of acting the claim may be made, the list delivered and verified by the wife. If the creditor, his agent or attorney demand an appraisement thereof, two disinterested householders of the neighborhood shall be chosen, one by the debtor and the other by the creditor, his agent or attorney, and these two, if they cannot agree, shall select a third; [but if either party fail to choose an appraiser, or the two fail to select a third, or] if one or more of the appraisers fail to act, the officer shall appoint one. The appraisers shall forthwith proceed to make a list by separate items, of the personal property selected by the debtor as exempt, which they shall decide as exempt, stating the value of each article, and annexing to the list their affidavit to the following effect: "We solemnly swear that to the best of our judgment the above is a fair cash valuation of the property therein described," which affidavit shall be signed by two appraisers at least, and be certified by the officer administering the oaths. The list shall be delivered to the officer holding the execution or other process and be by him annexed to and made part of his return and the property therein specified shall be exempt from levy and sale, and the other personal estate of the debtor shall remain subject thereto. In case no appraisement be required the officer shall return with the process the list of the property claimed as exempt by the debtor. The appraisers shall each be entitled to one dollar, to be paid by the creditor, if all the property claimed by the debtor shall be exempt; otherwise to be paid by the debtor.

# CHAPTER XXXIII.

## CLAIM TO PROPERTY LEVIED UPON AND ATTACHED.

SECTION
350. When a person other than defendant claims, affidavit, bond, etc.
351. Sureties shall justify.
352. Return of sheriff, and docketing of case.

SECTION
353. Claimant shall be plaintiff, officer and execution plaintiff, defendants.
354. Trial of, judgment, costs.

SEC. 350. When any other person than the judgment debtor shall claim property levied upon or attached, he may have the right to demand and receive the same from the sheriff or other officer making the attachment or levy, upon his making an affidavit that the property is his, or that he has a right to the immediate possession thereof, stating on oath the value thereof, and giving to the sheriff or officer a bond, with sureties in double the value of such property, conditioned that he will appear at the next term of the district court of the county in which the property was seized, which shall commence ten days or more after the bond is accepted by the sheriff or other officer, and make good his title to the same, or that he will return the property or pay its value to the said sheriff or other officer.

SEC. 351. If the sheriff or other officer require it, the sureties shall justify as in other cases, and in case they do not so justify when required, the sheriff or officer shall retain the property; if the sheriff or officer do not require the bail to justify he shall stand good for their sufficiency. He shall date and endorse his acceptance upon the bond.

SEC. 352. The officer shall return the affidavit, bond and justification if any, to the office of the clerk of the district court, and the clerk shall place the same upon his trial docket at the first term, which shall commence ten days or more after it was accepted by the sheriff or officer as above provided for, and it shall stand for trial at that term.

SEC. 353. The person claiming the property shall be plaintiff, and the sheriff and plaintiff in the execution, defendants.

SEC. 354. If the claimant makes good his title to the property, the bond shall be canceled; if to a portion thereof, a like proportion of the bond shall be canceled; but if he shall not maintain his title, judgment shall be rendered against him and his sureties for the value of the property, or for such less amount as shall not exceed the amount due on the original execution or attachment. When the judgment is in favor of the sheriff for the entire property, the claimant shall pay the costs; when the claimant recovers all the property, judgment shall be given in favor of the claimant for costs; when the claimant recovers a portion of the property only, the costs shall be apportioned. When the plaintiff prevails, the costs may be taxed against the defendant who was plaintiff in the execution or attachment, or the court may, if it shall be of opinion that the sheriff attached or levied upon said property without the exercise of due caution, adjudge him to pay the costs or any portion thereof.

# CHAPTER XXXIV.

## SALE OF PROPERTY UNDER EXECUTION.

SECTION
355. Execution against property, how executed.
356. When property in possession of, owing from garnishee.
357. When garnishee gives sheriff certificate.
358. Judgment debtor may retain property till day of sale; bond.
359. Notice of sale shall be given, requirements.
360. Manner of conducting sale.
361. Power of sheriff to adjourn sales.
362. Of delivery of personal property to purchasers; bills of sale.
363. Form and manner of the sale of real estate.
364. Land sold by the acre, how measured.
365. Land sold by tract or parcel not to be measured.
366. Land to go to highest bidder; money to be returned, etc.
367. Proceedings in confirmation sale of real estate.
SECTION
368. In case of eviction of purchaser.
369. Contribution among joint judgment debtors.
370. Real estate subject to redemption; certificate of sale.
371. Who may redeem.
372. Time for redemption; manner.
373. Terms of redemption for other redemptioners.
374. Purchaser to have sheriff's deed, when.
375. Mode of redeeming.
376. Redemptioner having prior lien, preferred.
377. Court may restrain waste, prior to sheriff's deed.
378. Who entitled to possession after sale.
379. Sheriff to make deed, when.
380. Purchaser to present deed to clerk, for endorsement, etc., prior to record.

SEC. 355. When the writ of execution is against the property of the judgment debtor, it shall be executed by the sheriff as follows:

1. If property has been attached, he shall endorse on the execution, and pay to the clerk forthwith the amount of the proceeds of sales of perishable property or debts due the defendant received by him, sufficient to satisfy the judgment.

2. If the judgment is not then satisfied, and property has been attached and remains in his custody, he shall sell the same, or sufficient thereof to satisfy the judgment.

3. If then any portion of the judgment remains unsatisfied, or if no property has been attached or the same has been discharged, he shall levy on the property of the judgment debtor, sufficient to satisfy the judgment.

4. Property shall be levied on in like manner and with like effect as similar property is attached.

5. Until a levy, personal property shall not be affected by the execution. When property has been sold or debts received by the sheriff on execution, he shall pay the proceeds thereof, or sufficient to satisfy the judgment, as commanded in the writ.

6. When property has been attached and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor without delay. If after satisfying the judgment any property, or the proceeds thereof, remain in the custody of the sheriff, he shall deliver the same tc the judgment debtor.

SEC. 356. In the case of property in the possession of, or owing from any garnishee, the sheriff shall proceed as follows:

1. If it appear from the certificate of the garnishee that he is owing a debt to the judgment debtor which is then due, if such debt is not paid by such garnishee to the sheriff, on demand, he shall levy on the property of the garnishee of the amount thereof, in all respects as if the execution was against the property of the garnishee. But if such debt be not then due, the sheriff shall sell the same, according to the certificate, as other property.

2. If, in like manner, it appear that the judgment debtor has rights or shares in the stock of the garnishee, as provided in subdivision 3 of

section 179, the sheriff shall sell the same according to the certificate as other property.

3. If in like manner it appear that the garnishee has other personal property of the judgment debtor in his possession, and the same has not been bailed to such garnishee for a period then unexpired, unless the same be delivered to the sheriff on demand, he shall levy upon the same wherever he may find it. But if such property is in the possession of such garnishee upon a bailment then unexpired, the sheriff shall sell the same, or the interest of the judgment debtor therein according to the certificate, as other property.

Sec. 357. When a sheriff with an execution levies upon any of the personal property mentioned in subdivision three of section one hundred and seventy-nine, and if the same is not delivered, paid or transferred to him at the time, he shall proceed thereafter in reference to such property as provided in the preceding section. Such property may be delivered, paid or transferred to the sheriff at the time of the levy, or sufficient thereof to satisfy the execution; and the sheriff's receipt to the person, association or corporation, as the case may be, shall be a sufficient discharge therefor.

Sec. 358. When the sheriff shall levy upon personal property, by virtue of an execution, he may permit the judgment debtor to retain he same, or any part thereof, in his possession until the day of sale, upon the defendant executing a written bond to the sheriff with sufficient surety, in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale, and for non-delivery thereof, an action may be maintained upon such bond by the sheriff or the plaintiff in the execution; but the sheriff shall not thereby be discharged from his liability to the plaintiff for such property.

Sec. 359. Before the sale of property on execution, notice thereof shall be given as follows:

1. In case of personal property, by posting written or printed notice of the time and place of sale in three public places of the county where the sale is to take place, not less than ten days successively.

2. In case of real property, by posting a similar notice, particularly describing the property, for four weeks successively, in three public places of the county where the property is to be sold, and publishing a copy thereof, once a week for the same period, in a newspaper of the county, if there be one, or if there be none, then in a newspaper published nearest to the place of sale.

Sec. 360. All sales of property upon execution, shall be made by auction between nine o'clock in the morning and four o'clock in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy, shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, and not in the possession of a third person, association or corporation, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property and consisting of several known lots or parcels, they shall be sold separately or otherwise as is likely to bring the highest price, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be sold separately. Sales of real property shall be made at the court house door.

SEC. 361. If at the time appointed for the sale, the sheriff should be prevented from attending at the place appointed, or being present should deem it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale not exceeding one week next after the day appointed, and so from time to time for the like cause, giving notice of every adjournment by public proclamation made at the same time, and by posting written notices of such adjournment under the notices of sale originally posted by him. The sheriff for like causes may also adjourn the sale from time to time, not exceeding thirty days beyond the day at which the writ is made returnable, with the consent of the plaintiff endorsed upon the writ.

SEC. 362. When the purchaser of any personal property, capable of manual delivery, and not in the possession of a third person, association or corporation, shall pay the purchase money, the sheriff shall deliver to him the property, and if desired shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property the sheriff shall give the purchaser a bill of sale with the like acknowledgment.

SEC. 363. The form and manner of sale of real estate by execution shall be as follows: The sheriff shall proclaim aloud at the place of sale, in the hearing of all the bystanders: "I am about to sell the following tracts of real estate (here reading the description,) upon the following execution:" (here reading the execution). He shall also state the amount which he is required to make upon the execution, which shall include damages, interests and costs up to the day of sale, and increased costs. He shall then offer the land for sale, the lots and parcels separately or together, as he shall deem most advantageous. All land except town lots shall be sold by the acre.

SEC. 364. When the land is sold by the acre and any less number of acres than the whole tract or parcel is sold, it shall be measured off to the purchaser in a square form, from the north-east corner of the tract or parcel, unless some person having an interest in the land shall, at the the sale, or prior thereto and before the bidding is made, request that the land sold shall be taken from some other part, or in some other form; in such case, if such request is reasonable, the officer making the sale shall sell accordingly.

SEC. 365. When an entire tract or parcel of land is sold by the acre, it shall not be measured but shall be deemed and taken to contain the number of acres named in the description, and be paid for accordingly; and when the number of acres is not contained in the description, the officer shall declare according to his judgment how many acres are contained therein, which shall be deemed and taken to be the true number of acres.

SEC. 366. The officer shall strike off the land to the highest bidder, who shall forthwith pay the money bid to the officer, who shall return the money with his execution and his doings thereon, to the clerk of the court from which the execution issued, according to the order thereof: *Provided, however*, That when final judgment shall have been entered in the supreme court and the execution upon which sale has been made issued from said court, the proceedings on execution and return shall be docketed for confirmation in the district court in which the action was originally commenced, and like proceedings shall be had as though said execution had issued from the said district court.

SEC. 367. Upon the return of any sale of real estate as aforesaid, the clerk shall enter the cause on which the execution issued, by its title, in the docket of the term next after such return, and mark opposite the same "sale of land for confirmation," and the following proceedings shall be had:

1. The plaintiff shall be entitled, on motion therefor, to have an order confirming the sale at the term next following the return of the execution, or if it be returned in term time, then at such term, unless the judgment debtor, or in case of his death, his representatives, shall file with the clerk, ten days before such term, or if the writ be returned in term time, then five days after the return thereof, his objections thereto.

2. If such objections be filed the court shall notwithstanding allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion, and direct that the property be resold in whole or in part, as the case may be, as upon an execution received of that date.

3. Upon the return of the execution, the sheriff shall pay the proceeds of the sale to the clerk, who shall then apply the same or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterwards made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale.

4. Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken except for a greater amount. If the motion to confirm be not heard and decided at the term at which it is made, it may be continued and heard and determined before the judge, or at any term thereafter. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale as to all persons in any other action, suit or proceeding whatever.

5. If after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor or his representative, as the case may be, at any time before the order is made upon the motion to confirm the sale, provided such party file with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to such party of course, otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of.

SEC. 368. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid with interest and the costs and disbursements of the suit by which he was evicted, from the plaintiff in the writ of execution.

SEC. 369. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays without a sale more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case the person so paying or contributing, shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after his payment, he file with the clerk of the court where the judgment was rendered. notice of his payment and claim to contribution or repayment. Upon filing such notice, the clerk shall make an entry thereof in the margin of the docket where the judgment is entered.

SEC. 370. Upon a sale of real property, when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases, such property shall be subject to redemption, as hereinafter provided in this chapter. At the time of sale the sheriff shall give to the purchaser a certificate of the sale, containing:

1. A particular description of the property sold.
2. The price bid for each distinct lot or parcel.
3. The whole price paid.
4. When subject to redemption, it shall be so stated. The matters contained in such certificate shall be substantially stated in the sheriff's return of his proceedings upon the writ.

SEC. 371. Property sold subject to redemption, as provided in the last section, or any part thereof separately sold, may be redeemed by the following persons or their successors in interest:

1. The judgment debtor or his successor in interest, in the whole or in any part of the property separately sold.
2. A creditor having a lien by judgment, decree or mortgage on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold.

The persons mentioned in subdivision two of this section are termed redemptioners.

SEC. 372. The judgment debtor or redemptioner may redeem the property within six months from the date of the order confirming the sale, by paying the amount of the purchase money, with interest at the rate of two per centum per month thereon from the time of sale, together with the amount of any taxes which the purchaser may have paid thereon, and if the purchaser be also a creditor having a lien prior to that of the redemptioner, the amount of such lien with interest.

SEC. 373. If the property be so redeemed by a redemptioner, either the judgment debtor or any other redemptioner may, within sixty days from the last redemption, again redeem it on paying the sum paid on the last redemption, with interest at the rate of two per centum per month thereon, from the date of the last preceding redemption, in addition together with the amount of any taxes which the last redemptioner may have paid thereon, and unless his lien be prior to that of such redemptioner, the amount of such lien with interest. The property may be again and as often as a debtor or a redemptioner is disposed, redeemed from the last previous redemptioner, within sixty days from the last redemption, on paying the sum paid on the last previous redemption, with interest at the rate of two per centum per month thereon from the date of such previous redemption, together with the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner, prior to his own, with interest. Notice of redemption shall be given to the sheriff.

Sec. 374. If no redemption be made within six months from the confirmation of the sale, the purchaser shall be entitled to a conveyance from the sheriff, or if so redeemed, whenever sixty days has elapsed, and no other redemption has been made, the time for redemption shall have expired and the last redemptioner shall be entitled to a conveyance from the sheriff. If the judgment debtor redeem at any time before the time for redemption expires, the effects of the sale shall be determined and he shall be restored to his estate.

Sec. 375. The mode of redeeming shall be as provided in this section:

1. The person seeking to redeem shall give the purchaser or redemptioner, as the case may be, two days' notice of his intention to apply to the sheriff for that purpose. At the time and place specified in said notice, such person may redeem by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate as in case of sale on execution adding therein the sum paid on redemption, from whom redeemed and the date thereof. A party seeking to redeem shall submit to the sheriff the evidence of his right thereto, as follows:

2. Proof that the notice required by this section has been given to the purchaser or redemptioner, or waived.

3. If he be a lien creditor, a copy of the docket of the judgment or decree under which he claims the right to redeem, certified by the clerk of the court where such judgment or decree is docketed, or if he seeks to redeem upon mortgage, the certificate of the record thereof.

4. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent, showing the amount then actually due on the judgment, decree or mortgage.

5. If the redemptioner or purchaser have a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the like evidence thereof, and of the amount due thereon, or the same may be disregarded.

Sec. 376. When two or more persons apply to the sheriff to redeem at the same time, he shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from whom the property is redeemed, if he attend at the redemption, or if not, at any time thereafter when demanded. Where a sheriff shall wrongfully refuse to allow any person to redeem, his right thereto shall not be prejudiced thereby, and upon the submission of the evidence and the tender of the money to the sheriff, as herein provided, he may be required by order of the court or judge thereof, to allow such redemption.

Sec. 377. Until the expiration of the time allowed for redemption, the court or judge thereof may restrain the commission of waste on the property by order granted, with or without notice, on the application of the purchaser or judgment creditor, but it shall not be deemed waste for the person in possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs to buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family while he occupies the property.

Sec. 378. The purchaser, from the day of sale until a resale or redemption, and the redemptioner from the day of his redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the same period.

Sec. 379. In all cases where real estate has been or may hereafter be sold, in pursuance of law, by virtue of an execution or other process, it shall be the duty of the sheriff or other officer making such sale to execute and deliver to the purchaser, or other person entitled to the same, a deed of conveyance of the real estate so sold, as follows:

1. When such other execution or process issues upon an ordinary money judgment, such sheriff or other officer shall execute and deliver such deed within six months after the confirmation of such sale.

2. When such execution or other process issues upon a decree for the foreclosure of a mortgage, such sheriff or other officer shall execute and deliver such deed within five days after the confirmation of such sale.

3. In case the term of office of the sheriff or other officer making such sale shall have expired before a sufficient deed has been executed, then the successor in office of such sheriff or other officer shall, within the time specified in this act, execute and deliver to the purchaser or other person entitled to the same, a deed of the premises so sold; and such deed shall be as valid and effectual to convey to the grantee the lands or premises so sold, as if the deed had been made by the sheriff or other officer who made the sale.

Sec. 380. The party to whom such sheriff's deed is given, shall upon the receipt thereof, take the same to the clerk of the district court, who shall enter in his book of levies where the levy is recorded, the sale of real estate therein conveyed, and shall endorse the fact upon the deed, with the date when presented to him and when made. And no county auditor shall record any such deed without such endorsement.

## CHAPTER XXXV.

### PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

Section
381. Debtor may be required to answer concerning his property; and may be arrested, when.
382 Debtor of judgment debtor may pay latter's creditor
383 Examination of debtors of judgment debtor, or of those having property belonging to him.
Section
384. Witnesses required to testify.
385. Order that property be applied on execution.
386. Proceedings upon claim of another to property, or on denial of indebtedness to judgment debtor.
387. Disobedience of orders, punished as contempt.

Sec. 381. After the issuing of an execution against property, and upon proof by affidavit of a party, or otherwise, to the satisfaction of the court or of a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place, before such judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor, toward the satisfaction of the judgment, as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before such judge. Upon being brought before the judge he may be ordered to enter into a bond with sufficient surety, that he will attend from time to time before the judge or referee, as shall be directed during the pendency of proceedings and until the final determination thereof, and will not, in the meantime, dispose of any portion of his property, not exempt from execution. In default of entering into such bond, he may be committed to prison.

Sec. 382. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

Sec. 383. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may by an order require such person or corporation, or any officer or member thereof to appear at a specified time and place, before him or a referee appointed by him, and answer concerning the same.

Sec. 384. Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this chapter, in the same manner as upon the trial of an issue.

Sec. 385. The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within sixty days next preceding the order, shall not be so applied, when it shall be made to appear by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Sec. 386. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt; and the court or judge may by an order forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time upon such terms as may be just.

SEC. 387. If any person, party or witness, disobey an order of the referee, properly made in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference for a contempt.

## CHAPTER XXXVI.

### OF WITNESSES AND EVIDENCE.

SECTION
388. Who are competent witnesses.
389. Interest affects credibility. Proviso.
390. Conviction of crime affects credibility; perjury, incompetency.
SECTION
391. Incompetent witnesses.
392. Parties who shall not be examined with out consent.

SEC. 388. Every person of sound mind, suitable age and discretion, except as hereinafter provided, may be a witness in any action, or proceeding.

SEC. 389. Any person offered as a witness shall not be excluded from giving evidence, by reason of his interest in the event of the action, as a party thereto, or otherwise, but such interest may be shown to affect his credibility: *Provided, however*, That in an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased or insane person, or as a guardian of a minor under the age of fourteen years, then a party in interest, or to the record, shall not be admitted to testify in his own behalf.

SEC. 390. Any person offered as a witness shall not be excluded from giving evidence by reason of conviction for crime, but such conviction may be shown to affect his credibility: *Provided*, That any person who shall have been convicted of the crime of perjury, shall not be a competent witness in any case, unless such conviction shall have been reversed, or unless he shall have received a pardon.

SEC. 391. The following persons shall not be competent to testify:

1. Those who are of unsound mind, or intoxicated at the time of their production for examination, and

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly.

SEC. 392. The following persons shall not be examined as witnesses:

1. A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

2. An attorney or counselor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

3. A clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

4. A regular physician or surgeon shall not, without the consent of

his patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient.

5. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

## CHAPTER XXXVII.

### MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES.

SECTION
393. Who shall not be compelled to attend, and tender of fees when subpœnaed.
394. What subpœna may require, and production of books, papers, etc.
395. How issued.
396. How served, and proof thereof.
397. Person in attendance required to testify, without notice.
398. Witness served, liable for damages for non attendance.
399. Witness failing to attend, guilty of contempt.
400. Attachment may issue for witness.
401. Testimony of prisoner, how obtained.
402. Order can only be upon affidavit.

SEC. 393. No person shall be obliged to attend as a witness before any court of record, judge, justice of the peace, commissioner, referee or other officer, in any civil action out of the sub-district in which he resides, unless his residence be within twenty miles of such court, judge, justice of the peace, commissioner, referee or other officer. And no person shall be compelled to attend as a witness in any civil action or proceeding, unless the fees be paid or tendered to him, which are allowed by law, for one day's attendance as a witness, and for traveling to and returning from the place where he is required to attend, provided such fees be demanded by him at the time of service of the subpœna.

SEC. 394. The subpœna may require not only the personal attendance of the person to whom it is directed, at a particular time and place, to testify as a witness, but may also require him to bring with him any books, documents or things under his control; but no public officer or person having the possession or control of public records or papers which by law are required to be kept in any particular office or place, shall be compelled to produce the same in any court.

SEC. 395. The subpœna shall be issued as follows:

1. To require attendance before a court of record, or at the trial of an issue therein; it shall be issued in the name of the United States, and be under the seal of the court before which the attendance is required, or in which the issue is pending.

2. To require attendance out of such a court before a judge, justice of the peace, commissioner, referee or other officer authorized to administer oaths or to take testimony in any matter under the laws of this territory, it shall be issued by such judge, justice of the peace, commissioner, referee or other officer before whom the attendance is required.

3. To require attendance before a commissioner appointed to take testimony by a court of any other state, territory or county, it may be issued by any judge or justice of the peace, in places within their respective jurisdictions.

SEC. 396. Such subpœna may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

SEC. 397. A person present in court or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

SEC. 398. If any person duly served with a subpœna and obliged to attend as a witness, shall fail to do so, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action.

SEC. 399. Such failure to attend as required by the subpœna, shall also be considered a contempt, and upon due proof, the witness may be punished by a fine not exceeding fifty dollars, and stand committed until said fine and costs are paid or until discharged by due course of law.

SEC. 400. The court, judge, justice of the peace or other officer, in such case, may issue an attachment to bring such witness before them to answer for contempt, and also testify as witness in the cause in which he was subpœnaed.

SEC. 401. If the witness be a prisoner confined in a jail or prison within this territory, an order for his examination in prison, upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be issued.

SEC. 402. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

## CHAPTER XXXVIII.

### EXAMINATION OF PARTIES.

SECTION
403. A party to action may be examined by adverse party.
404. Discovery may be sought, instead of examination on trial.
405. Of answer to interrogatories filed.
SECTION
406. Filing interrogatories no bar to amination on trial.
407. Rebuttal of testimony of adverse party.
408. Refusal of adverse party to answer, etc., penalty; proviso.

SEC. 403. A party to an action or proceeding may be examined as a witness, at the instance of the adverse party, or of one of several adverse parties, and for that purpose may be compelled in the same manner, and subject to the same rules of examination as any other witness to testify at the trial, or he may be examined on a commission.

SEC. 404. Instead of the examination being had at the trial, as provided by the last section, the plaintiff, at the time of filing his complaint or afterwards, and the defendant, at the time of filing his answer or afterwards, may file in the clerk's office interrogatories for the discovery of facts and documents material to the support or defense of the action, to be answered on oath by the adverse party.

SEC. 405. Such interrogatories shall be answered, and such answers filed in the clerk's office, within twenty days after the same are served on the party interrogated, unless for cause shown a further time be allowed by the court or judge thereof.

SEC. 406. A party to an action having filed interrogatories to be answered by the adverse party, as prescribed by the last two sections, shall not thereby be precluded from examining such adverse party as a witness at the trial.

SEC. 407. The testimony of a party, either upon examination at the trial, or upon interrogatories filed, may be rebutted by adverse testimony.

Sec. 408. If a party refuse to attend and testify at the trial, or to be examined upon a commission, or to answer any interrogatories filed, his complaint, answer, or reply may be stricken out, and judgment taken against him, and he may also, in the discretion of the court, be proceeded against as in other cases for a contempt: *Provided*, That the preceding sections shall not be construed so as to compel any person to answer any question where such answer may tend to criminate himself.

## CHAPTER XXXIX.

### DEPOSITIONS.

Section
409. Testimony can be taken by, when.
410. May be taken any time after summons served.
411. In territory who can take, notice.
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413. Commissions to take, how granted and issued.
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415. When notice may be served by publication.
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Section
418. May be used by either party; exceptions, etc., form of taking and corrections by witness.
419. Shall not be read, if reason for taking does not exist.
420. May be read in subsequent action, between same parties: when.
421. May be used in appellate court.
422. Witness may be compelled to appear by officer taking.

Sec. 409. The testimony of a witness may be taken by deposition, to be read in evidence in an action, suit, or proceeding commenced and pending in any court in this territory in the following cases:

1. When the witness resides out of the sub-district and more than twenty miles from the place of trial.

2. When the witness is about to leave the sub-district, and go more than twenty miles from the place of trial, and there is a probability that he will continue absent when the testimony is required.

3. When the witness is sick, infirm or aged so as to make it probable that he will not be able to attend at the trial.

4. When the witness resides out of the territory.

Sec. 410. Either party may commence taking testimony by depositions at any time after service of summons upon the defendants.

Sec. 411. Either party may have the deposition of a witness taken in this territory, before any judge of the district court, justice of the peace, clerk of the supreme or district court, mayor of a city or notary public, on serving on the adverse party or his attorney previous notice of the time and place of examination. Such notice shall be at least three days, and in addition one day, Sundays excepted, for every ten miles of the distance from the place of examination to the residence of the person to whom notice is given.

Sec. 412. Depositions may be taken out of the territory by a judge, justice or chancellor or clerk of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town, or any person authorized by a special commission from any court of this territory.

Sec. 413. Any court of record in this territory or any judge thereof, is authorized to grant a commission to take depositions within or without this territory. The commission must be issued to a person or persons therein named by the clerk under the seal of the court granting the same, and depositions under it must be taken upon written interrogatories, unless the parties otherwise agree, upon notice to the adverse party as required in section 411.

Sec. 414. Prior to the taking of any deposition, unless taken under a special commission, a written or printed notice specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place of taking the same, shall be served upon the adverse party, his agent or attorney of record, or left at his usual place of abode. The notice shall be served so as to allow the adverse party sufficient time, by the usual route of travel to attend, and one day for preparation, exclusive of Sundays and the day of service; and the examination may, if so stated in the notice, be adjourned from day to day.

Sec. 415. When the party against whom the deposition is to be read is absent from or a non-resident of the territory, and has no agent or attorney of record therein, he may be notified of the taking of the deposition by publication. The publication must be made three consecutive weeks, in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county, and if not in some newspaper printed in this territory of general circulation in that county. The publication must contain all that is required in the written or printed notice, and may be proved in the manner prescribed in case of the publication of summons.

Sec. 416. The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person in the presence and under the direction of such officer. When completed it shall be carefully read to or by the witness, corrected if desired, and subscribed by him and certified by the officer substantially as follows:

Territory of Washington, } ss.
County of ———; }

I, A. B., justice of the peace in and for said county, (or judge, clerk, etc., as the case may be,) do hereby certify that the above deposition was taken before me, and reduced to writing by myself, (or witness as the case may be,) at ———, in said county, on the ——— day of ———, 18—, at ——— o'clock, in pursuance of notice hereto annexed; that the above named witness, before examination, was sworn (or affirmed) to testify the truth, the whole truth and nothing but the truth, and that the said deposition was carefully read to (or by) said witness, and then subscribed by him. A. B., (Justice of the Peace.)

Dated at ———, the ——— day of ——— 18—.

Sec. 417. The deposition shall be enclosed in a sealed envelope, by the officer taking the same, and directed to the clerk of the court, arbitrators, referee, or justice of the peace before whom the action is pending, or to such person as the parties in writing may agree upon, and either delivered to the clerk of the court or other person, or transmitted through the mail or by some private person.

Sec. 418. Such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions, to the competency or credibility of the witness, or the manner of taking the deposition. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was taken at the time of the examination. It shall be the duty of the person taking the deposition to propound to the witness every question proposed by either party, and to note all objections to the form of any interrogatory, and when any interrogatory is objected to on account of form, unless the form is amended and the objection waived, he shall write after the question and before the answer the words "objected to," and when any witness declines to answer a question on the ground that it will criminate himself, that fact shall also be noted after the question if written down. The deposition may be taken in the form of a narative, or by question and answer, or partly in either form, as either party present at the examination shall require. When taken by question and answer, the officer shall first write down the question and then the answer, as nearly as may be in the language of the witness; but when the deposition is read to the witness previous to signing it, he shall be permitted to amend his answer to any question or any part of his deposition; such amendment, however, unless both parties shall otherwise agree, shall not be made by way of interlining or erasing, but shall be added at the end of the deposition under the title "amendment by the witness," and such amendment shall intelligibly refer to the part so amended.

Sec. 419. No deposition shall be used if it appear that the reason for taking it no longer exists: *Provided, however,* That if the party producing the deposition in such case shall show any sufficient cause then existing for using such deposition, it may be admitted.

Sec. 420. When the plaintiff in any action shall discontinue it, or when it shall be dismissed for any cause, and another action shall afterwards be commenced for the same cause between the same parties, or their respective representatives, all depositions lawfully taken in the first action may be used in the other, in the same manner and subject to the same conditions and objections as if originally taken for such other action: *Provided,* That the deposition shall have been duly filed in the court where the first action was pending, and shall have remained in the custody of the court, from the termination of the first action until the commencement of the other.

Sec. 421. When any action shall have been appealed from one court to another, all depositions lawfully taken to be used in the court below, may be used in the appellate court, in the same manner and subject to such exceptions for informality or irregularity, and none other, as were taken in writing to such depositions in the court below.

Sec. 422. Any witness may be subpœned and compelled, by any officer authorized to take depositions, to appear and give his deposition at any place within twenty miles of the abode of such witness, in like manner as he may be subpœned and compelled to attend as a witness in any court, and he shall suffer the same penalties for a failure to attend as are prescribed in chapter 37 of this act.

## CHAPTER XL.

### PROCEEDINGS TO PERPETUATE TESTIMONY.

SECTION
423. Testimony, how perpetuated.
424. Proceedings preparatory to taking such testimony.
425. Commission, when to issue.

SECTION
426. Deposition, how taken.
427. To be filed when returned; and used subject to legal objection.

Sec. 423. When any person shall be desirous to perpetuate the testimony of any witness, he shall make a statement in writing, setting forth briefly and substantially his title, claim or interest in, or to the subject concerning which he desires to perpetuate the evidence, and the names of all the persons interested or supposed to be interested therein, and also the name of the witness proposed to be examined, which statement shall be under oath and filed in the district court. If the subject of the proposed deposition relate to real estate within this territory, the statement shall be filed in the county where the lands, or any part thereof lie, otherwise in the county where the parties interested, or some of them reside. Upon such statement an application may be made to such court or judge thereof, to allow the examination of such witness.

SEC. 424. The court or judge shall appoint a time and place for hearing such application, and shall order notice thereof and of the statement, to be served on all persons mentioned therein as adversely interested in the matter. The notice shall be served personally on all those living in the territory at least twenty days before the time of hearing the application. Upon those who are not residents of the territory, it shall be served by publication or otherwise, in the same manner as a notice is served upon a non-resident.

SEC. 425. If upon hearing of the parties or of the applicant alone, should no adverse party appear, the court or judge shall be satisfied that there is sufficient cause for taking the deposition, an order shall be made allowing the examination of the witness; and such court or judge may direct a commission to issue therefor, in like manner as a commission to take the testimony of witnesses as in other cases.

SEC. 426. The deposition of such witness, whether residing in this territory or not, shall be taken upon written interrogatories filed by the applicant, and cross interrogatories filed by any party adversely interested, if he shall think fit, and it shall be taken and returned substantially in the same manner as if taken upon commission, to be used in any cause pending in the same court.

SEC. 427. The deposition when returned shall be filed in the office of the clerk of the court by whom the commission was issued, and if a trial be had between the person, at whose request the deposition was taken, and the person named in the statement, or any of them, or their successors in interest, upon proof of the death or insanity of the witness, or his inability to attend the trial by reason of age, sickness, or settled infirmity, the deposition, or a certified copy thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objections to the form of the interrogatory shall be made at the trial, unless the same were taken at the time of the examination.

## CHAPTER XLI.

### RECORDS, DOCUMENTS, BOOKS, ETC.

SECTION
428. Exhibit of documents, etc., to adverse party; on refusal excluded as evidence.
429. Instrument may be read without proof of its genuineness.
430. Records of other courts admissible, when.

SECTION
431. Copies of instruments, when admissible.
432. Of certified copies of official papers.
433. Certificate of residence, etc., by land officers.
434. Of the validity of official seal.
435. Of printed copies of foreign statutes.

SEC. 428. Any court or judge thereof, in which an action is pending, may, upon notice, order either party to give to the other within a specified time, an inspection and copy, or permission to take a copy of any book, document or paper in his possession, or under his control, containing evidence relating to the merits of the action or defense therein. If compliance with the order be refused, the court may exclude the book, document or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be, and the court may also punish the party refusing as for contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers or documents where he is examined as a witness.

Sec. 429. If either party at any time before trial allow the other an inspection of any writing, material to the action, whether mentioned in the pleadings or not, and deliver to him a copy thereof, with notice that he intends to read the same in evidence on the trial of the cause, it may be so read without proof of its genuineness or execution, unless denied by affidavit before the commencement of the trial. If such denial be made, of any writing not mentioned in the pleadings, the court may give time to either party to procure evidence, when necessary for the furtherance of justice.

Sec. 430. The records and proceedings of any court of the United States, or any state or territory, shall be admissible in evidence in all cases in this territory when duly authenticated by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed.

Sec. 431. Whenever any deed, conveyance, bond, mortgage or other writing, shall have been recorded or filed in pursuance of law, copies of record of such deed, conveyance, bond or other writing, duly certified by the officer having the lawful custody thereof, with the seal of the office annexed, if there be such seal, if there be no such seal, then with the official certificate of such officer, shall be received in evidence to all intents and purposes as the originals themselves.

Sec. 432. Copies of all papers on file in the office of the surveyor-general of Oregon or Washington territory, registers and receivers of the various land offices in this territory, secretary of Washington territory, territorial treasurer, territorial auditor, territorial superintendent of common schools, county treasurer, county auditor, or any matter recorded in either of said offices duly certified by the respective officers with the respective seals of office annexed, where such officers have an official seal, shall be admitted in evidence in all courts of the territory.

Sec. 433. Any certificate of residence and cultivation of the public lands issued by the surveyor-general of Oregon or Washington territory, or by the register and receiver of either of the land offices therein, or any certificate, receipt or exemplification of the records of either of said offices issued to any settler upon, or purchaser of said lands, or in any way affecting the rights of parties to lands in said territory, issued or given in pursuance of law, or as evidence of any matter recorded in either of said offices, or any copies of maps, plats or diagrams of land claims of every nature or kind or plats of the public surveys, certified by either of said officers, shall be admitted as evidence in all the courts of this territory. In actions affecting real estate, such certificate shall be *prima facie* evidence that the title of the lands mentioned or described in such receipt is in the person or persons named therein.

SEC. 434. A seal of court or public office, when required to any writ, process, or proceeding to authenticate a copy of any record or document, may be affixed by making an impression directly on the paper which shall be as valid as if made upon a wafer or on wax.

SEC. 435. Printed copies of the statute laws of any state, territory, or foreign government, if purporting to have been published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts in this territory, and on all other occasions as presumptive evidence of such laws.

## CHAPTER XLII.

### TO REVERSE, VACATE, OR MODIFY JUDGMENTS IN THE COURTS IN WHICH RENDERED.

SECTION
436. Causes for which district court at next term may vacate or modify.
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442. Vacation of order to be decided before validity of defense or cause of action.
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444. Damages on affirmance of judgment.
445. Appellate jurisdiction of supreme court, and herein of suits in error and appeals.
446. Orders to which appeals or writs of error taken.
447. Supreme court may prescribe rules for allowance of appeals and writs of error.
448. Of mistake of clerk.
449. A correctable order in inferior court shall not be reversed.
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452. May issue all writs necessary for appellate jurisdiction.
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454. One of co-partners may prosecute writ of error.
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459. Appeal only perfected when.
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481. May enforce mandates on inferior courts.
482. Of petitions for re-hearing.
483. Petition for re-hearing shall contain argument for.
484. Clerk to docket causes.
485. Hearing of causes by court.
486. Opinion to be filed with clerk.
487. Remititur to be entered of record on receipt.
488. Errors need not be assigned in particular form.
489. All motions to be entered, of notice.
490. Original papers may be produced, if necessary.
491. Action shall not abate by death.
492. Motion of appellee to dismiss.
493. When appeal or writ of error improperly taken or prosecuted.
494. Of service of notice in appellate proceedings.
495. Of executions from supreme court.
496. Construction of terms appeal, error, etc.

SEC. 436. The district court in which a judgment has been rendered, or by which, or the judge of which, a final order has been made, shall have power after the term at which such judgment or order was made, to vacate or modify such judgment or order:

1. By granting a new trial for the cause, within the time and in the manner, and for any of the causes prescribed by the sections relating to new trials.

2. By a new trial granted in proceedings against defendant served by

publication only as prescribed in section sixty-seven.

3. For mistakes, neglect or omission of the clerk, or irregularity in obtaining a judgment or order.

4. For fraud practiced by the successful party in obtaining the judgment or order.

5. For erroneous proceedings against a minor person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings.

6. For the death of one of the parties before the judgment in the action.

7. For unavoidable casualty, or misfortune preventing the party from prosecuting or defending.

8. For error in a judgment shown by a minor, within twelve months after arriving at full age.

Sec. 437. When the grounds for a new trial could not with reasonable diligence have been discovered before, but are discovered after the term at which the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed as in other cases, not later than the second term after the discovery, on which notice shall be served and returned, and the defendant held to appear as in an original action. The facts stated in the petition shall be considered as denied without answer. The case shall be tried as other cases by ordinary proceedings, but no motion shall be filed more than one year after the final judgment was rendered.

Sec. 438. The proceedings to correct mistakes or omissions of the clerk or irregularity in obtaining a judgment or order, shall be by motion served on the adverse party, or on his attorney in the action, and within one year; and when made to vacate a judgment because of irregularity in obtaining it, must be made on the second day of the succeeding term.

Sec. 439. The proceedings to obtain the benefit of subdivisions four, five, six, seven and eight of section 436, shall be by petition, verified by affidavit, setting forth the judgment or order, the facts or errors constituting a cause to vacate or modify it, and the facts constituting a defense to the action, if the party applying was a defendant; and such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto be a minor or person of unsound mind, and then within one year from the removal of such disability.

Sec. 440. In such proceedings the party shall be brought into court in the same way, on the same notice as to time, mode of service, and mode of return, and the pleadings shall be governed by the principles, and issues be made up by the same form, and all the proceedings conducted in the same way, as near as can be, as in original action by ordinary proceedings, except that defendant shall introduce no new cause, and the cause of the petition shall alone be tried.

Sec. 441. The judgment shall not be vacated on motion or petition until it is adjudged that there is a valid defense to the action in which the judgment is rendered; or, if the plaintiff seeks its vacation, that there is a valid cause of action; and when judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

SEC. 442. The court may first try and decide upon the grounds to vacate or modify a judgment or order, before trying or deciding upon the validity of the defense or cause of action.

SEC. 443. The party seeking to vacate or modify a judgment or order may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or the judge upon its being rendered probable, by affidovit or petition sworn to, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified.

SEC. 444. In all cases of affirmance of the judgment or order, when the proceedings have been suspended, judgment shall be rendered against the plaintiff in error for the amount of the former judgment, interest and costs, together with damages at the discretion of the court, not exceeding ten per cent. on the amount of the judgment.

SEC. 445. The supreme court has appellate jurisdiction over all judgments and decisions of all other courts of record, as well cases of civil actions as in proceedings of a special or independent character.—For the exercise of such appellate jurisdiction, section 1869 of the revised statutes of the United States, providing for the allowance of writs of error, bills of exception and appeals, and for the exercise of chancery as well as common law shall govern. Every final judgment, order or decision of a district court or judge thereof, in actions at law, as the same are known and recognized, may be re-examined by writ of error in the supreme court, for error in law. In such cases the supreme court shall hear and determine the cause upon the errors assigned in the notice of the plaintiff in error. The party suing out such writ of error, shall be called the plaintiff in error and the adverse party shall be called the defendant in error. Every final judgment, order, or decision of a district court, or judge thereof, in actions of an equitable nature, where equitable relief is sought, or where chancery jurisdiction has been exercised, shall be reviewed in the supreme court by appeal. In all such equitable causes, the party taking or prosecuting the appeal shall be known as the appellant; the adverse party the appellee. When both parties appeal, the cause shall be docketed as it was in the court below. In suits of error and appeals, subject always to the distinction herein recognized, the practice shall be as hereinafter prescribed.

SEC. 446. An appeal or writ of error may also be taken to the supreme court from the following orders:

1. An order made affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment from which an appeal might be taken.
2. A final order made in special proceedings affecting a substantial right therein, or made on a summary application in an action after judgment.
3. When an order grants or refuses, continues, or modifies a provisional remedy; or grants, refuses, dissolves, or refuses to dissolve an injunction or attachment; when it grants or refuses a new trial, or when it sustains or overrules a demurrer.
4. An intermediate order involving the merits and materially affecting the final decision.

5. An order or judgment on habeas corpus. If any of the above orders are made by a judge, the same is recorded in the same way as if made by a court.

SEC. 447. The court may also, in its discretion, prescribe rules for allowing appeals or writs of error on such other intermediate orders or decisions as is deemed expedient, and for permitting the same to be taken and tried during the progress of the trial in the court below; but such intermediate appeals or writs must not retard proceedings in the court from which the appeal is taken.

SEC. 448. A mistake of the clerk shall not be ground for an appeal or writ of error, until the same has been presented and acted upon by the court below.

SEC. 449. A judgment or order shall not be reversed for an error which can be corrected on motion in an inferior court, until such motion has been made and overruled.

SEC. 450. The supreme court may review and reverse on appeal, or writ of error, any judgment or order of the district court, although no motion for a new trial was made in such court.

SEC. 451. When a cause is tried by the court, it shall not be necessary in order to secure a review of the same in the supreme court, that there should have been any finding of facts or conclusions of law stated in the record; but the supreme court shall hear and determine the same whenever it shall appear from a certificate of the judge, agreement of parties, or their attorneys, or, in case the evidence consists wholly of written testimony, from the certificate of the clerk, that the transcript contains all the evidence introduced by the parties on the trial in the court below.

SEC. 452. The court may issue all writs and process necessary for the exercise and enforcement of its appellate jurisdiction.

SEC. 543. Appeals and writs of error from the district court may be taken to the supreme court at any time within six months from the rendition of the judgment or order appealed from, or complained of, and not afterward. But nothing herein contained shall prevent the district judge who tried the cause, to make certificate that the cause involves the determination of a question of law, upon which it is desirable to have the opinion of the supreme court. In such cases said judge may direct a special verdict to be found, and in all cases the parties may make an agreed statement of facts, signed by themselves or their attorneys, which shall be entered of record, which shall have the effect of a special verdict, and may under the direction of the judge of the district court, be taken to the supreme court, and for that purpose the district court shall render a judgment in form only, which shall not be executed until the final decision of the cause. The supreme court, on hearing such cases, may give judgment or remand the cause for further proceedings in the district court.

SEC. 454. A part of several co-parties may appeal or prosecute a writ of error; but in such case they must serve notice thereof upon all the other co-parties and file the proof thereof with the clerk of the supreme court.

SEC. 455. If the other co-parties refuse to join, they cannot nor can any of them, take an appeal or writ of error afterwards; nor shall they derive any benefit from the appeal, or suit in error unless from the necessity of the case.

SEC. 456. Unless they appear and decline to join, they shall be deemed to have joined and shall be liable for their due proportion of costs.

SEC. 457. An appeal or writ of error from part of an order, or from one of the judgments of a final adjudication, or from part of a judgment, shall not disturb or delay the rights of any party to any judgment or part of any judgment, or order not appealed from, but the same shall proceed as if no such appeal had been made.

SEC. 458. An appeal, or writ of error is taken by filing with the clerk of the court in which the judgment or order appealed from is entered a notice, stating the appeal from the same, or some specific part thereof, and serving a copy of said notice on the adverse party or his attorney. Every notice of appeal or writ of error must be signed by the party taking the same, or his attorney of record, and must contain the title of the district court in which the proceedings sought to reviewed were had; the title of the cause as in the district court; a particular description of the judgment, decree or order sought to be reviewed; and, in case of appeal, a particular description of every decision, ruling, order or decree by which the appellant claims to have been aggrieved and which he relies upon as ground for a reversal or modification of the judgment, order or decree; and in case of a writ of error, a particular description of the errors assigned.

SEC. 459. An appeal shall not be perfected until the notice thereof has been served upon the adverse party, or his attorney of record. Upon payment of his fees, the clerk shall forthwith transmit by mail, express, or messenger, not a party, nor the attorney of a party, a transcript of the record in the cause, or so much thereof as the appellant, or plaintiff in error, in writing, in the notice has directed, to which shall be appended copies of the notice of appeal, and the supersedeas bond, if any.

SEC. 460. The notice of appeal or suit in error, must be served at least thirty days, and the cause filed and docketed at least fifteen days before the first day of the next term of the supreme court, or the same shall not then be tried unless by consent of parties. If the appeal or writ of error is taken less than thirty days before the term, it must be so filed and docketed, before the next succeeding term.

SEC. 461. If the appellant fails to file a transcript, and have the cause docketed, as provided in the preceding section, the appellee or defendant in error may file a certified copy of the judgment or order appealed from, and of the notice served, and, on motion, have the appeal, or suit in error dismissed, or the judgment or order appealed from, affirmed: *Provided*, That when the failure to file the transcript is owing to the fault or omission of the clerk of either the appellate or inferior court, or other circumstance, over which the appellant has no control, the court shall not dismiss the cause, but shall fix such time for hearing the same, as will insure a fair trial.

SEC. 462. If the transcript has been sent up, but the appellant or plaintiff in error does not file the same when the same should be filed, as herein provided, the appellee or defendant in error may file the same, and may, on motion, have the appeal dismissed or judgment affirmed, as the court from the circumstances of the case shall determine.

SEC. 463. If the transcript has been sent up, and errors have not been assigned in the notice as hereinbefore required, the appellee or defendant in error may have the appeal or writ of error dismissed or the judgment or order affirmed, unless good cause for the failure be shown by affidavit.

SEC. 464. In an action by ordinary proceedings, and in an action by equitable proceedings, tried in whole or in part on oral testimony, all proper entries made by the clerk, and all papers pertaining to the cause and filed therein, except subpœnas, depositions, and other papers which are used as mere evidence, are to be deemed part of the record. But in an action by equitable proceedings, tried upon written testimony, the depositions and all papers which were used as evidence, are to be certified up to the supreme court, and shall be so certified, not by transcript, but in the original form. But a transcript of a motion, affidavit or other paper, when it relates to a collateral matter, shall not be certified unless by direction of the appellant. If so certified, when not material to the determination of the appeal or writ of error, the court may direct the person blameable therefor to pay the costs thereof.

SEC. 465. The appellant or plaintiff in error shall file a perfect transcript, and to that end the clerk of the court below must, at any time on his suggestion of the diminution of the record and on the payment of fees, certify up any omitted part of the record, according to the truth, as the same appears of record in his office; and such appellant shall not be entitled to any continuance in order to correct the record, unless it shall clearly appear to the court that he is not in fault. Subject to which requirement, either party may, on motion before trial day, obtain an order on the clerk below, commanding him to transmit at once to the supreme court a true copy of such imperfect or omitted part of the record as shall be in general terms described in the affidavit or order. Such motion must be supported by affidavit, unless the diminution be apparent or admitted by the adverse party, and must not be granted unless the court is satisfied that it is not made for delay.

SEC. 466. An appeal or writ of error shall not be dismissed for any informality or defect in the notice or the service thereof, if from the transcript it can be reasonably understood that the adverse party has had sufficient notice of the pendency of the suit in error or appeal, and the notice recites the errors alleged or the order or judgment complained of with such certainty, that his substantial right would not be prejudiced by the hearing of the cause. And the supreme court shall, upon reasonable terms, allow all amendments in matters of form, curative of such defects, to the end that substantial justice be secured to the parties.

SEC. 467. An appeal or writ of error shall not stay proceedings on the judgment or order or any part thereof, unless the appellant shall cause to be executed before the clerk of the court which rendered the judgment or order, a bond with one or more sureties to be approved by the clerk, to the effect that the appellant or plaintiff in error shall pay to the appellee or defendant in error all costs and damages that shall be adjudged against the appellant on the appeal; also that he will satisfy and perform the judgment or order appealed from, in case it shall be affirmed, and any judgment or order which the supreme court may render, or order to be rendered by the inferior court, not exceeding in amount or value the original judgment or order, and all rents or damages to property during the pendency of the appeal, out of the possession of which the appellee is kept by reason of the appeal. If the bond is intended to stay proceedings on only a part of the judgment or order, it shall be varied so as to secure the part stayed alone. When such bond has been approved by the clerk, and filed, he shall issue a written order commanding the appellee and all others to stay proceedings on such judgment or order, or on such part as is superseded as the case may be. No appeal or stay shall vacate or affect the judgment not appealed from.

SEC. 468. In cases wherein the appellant or plaintiff in error has perfected his appeal or writ of error to the supreme court, and the clerk of the district court has unjustly refused to approve the appeal bond offered, or makes the penalty therein too large, or the conditions thereof unjust, the appellant may move the supreme court if in session, or in its vacation a judge thereof, on giving to the appellee such written notice as the court or judge thereof may prescribe, to determine the conditions, fix the penalty, and approve the appeal bond. The motion, verified by the affidavit of the appellant or plaintiff in error, or his attorney, shall contain a brief statement of the nature of the action in which the appeal or writ of error was taken, of the judgment or order appealed from, of the steps taken by the appellant or plaintiff in error with reference to his appeal, and of his giving, or offering to give, an appeal bond, of the action of the clerk of the court below, with reference to such bond, and wherein he has acted wrongfully; and if the supreme court, or any judge thereof, considers that the clerk has made unjust conditions in the bond, or the penalty thereof too high, or has wrongfully refused to approve the same, such court or judge shall issue an order prescribing the conditions of the appeal bond, fixing the penalty thereof and either approve it or direct the clerk of the supreme court so to do, which bond shall be filed with the officer last named. The supreme court, or judge thereof, may order that all or any part of the papers and records in the cause appealed, or certified copies thereof, be produced on the hearing of such motion, and pending the disposition thereof, may make an order staying the enforcement of the judgment or order appealed from, and on such terms as are just. The order, if made by the judge, shall be in writing and signed by him, and upon the service thereof, or of a certified copy, when made in court, upon the clerk of the court below, all proceedings in the court appealed from shall be stayed, and all orders, all processes, executions, or other papers issued therefrom shall be recalled, and the appellant or plaintiff in error be placed in the same condition that he was when the judgment or order appealed from was made or rendered.

SEC. 469. If the appellee or defendant in error believe the bond defective, or the sureties insufficient, he may move the supreme court, if in session, or in its vacation, on ten days' written notice to the appellant, may move any judge of said court to discharge the bond, and if the court or such judge shall consider the sureties insufficient, or the bond substantially defective in securing the rights of the appellee, the court or such judge shall issue an order discharging such bond, unless a good bond with sufficient sureties, be executed before a day by him fixed. The order, if made by a judge, shall be in writing and signed by him; and upon his filing, or the filing of a certified copy of the order, when made in court, in the office of the clerk of the inferior court, execution and other proceedings for enforcing the judgment or order may be taken if a new and good bond is not filed and approved by the day as aforesaid.

Sec. 470. But another order staying proceedings may be issued by the clerk, upon execution before him, of a new and lawful bond with sufficient sureties as hereinbefore provided.

Sec. 471. If the judgment or order is for the payment of money, the penalty shall be in at least twice the amount of the judgment and costs. If not for the payment of money the penalty shall be sufficient to save the appellee or defendant in error harmless from the consequences of taking the appeal or writ of error. But it shall in no case be less than one hundred dollars.

Sec. 472. The taking of the appeal from a part of a judgment or order, and the filing of a bond as above directed, does not cause a stay of execution as to any part of the judgment or order not appealed from.

Sec. 473. If execution has issued prior to the filing of the bond above contemplated, the clerk shall countermand the same.

Sec. 474. Property levied upon and not sold at the time such countermand is received by the sheriff, shall forthwith be delivered up to the judgment debtor.

Sec. 475. The supreme court may reverse, affirm or modify the judgment or order below, or the part of either appealed from, or may render such judgment or order as the inferior court or judge should have done, according as it may think it proper.

Sec. 476. The supreme court, when it affirms the judgment, shall also, if the appellee or defendant in error moves therefor, render judgment against the appellant or plaintiff in error and his sureties on the bond above mentioned for the amount of the judgment, damages and costs referred to therein, in case such damages can be accurately known to the court without an issue and trial.

Sec. 477. Upon the confirmance of any judgment or order for the payment of money, the collection of which, in whole or in part has been superseded by bond as above contemplated, the court shall award to the appellee, or defendant in error, damages upon the amount superseded; and, if satisfied by the record that the appeal or writ of error was taken for delay only, must award such sum as damages, not exceeding fifteen per cent. thereon, as shall effectually tend to prevent the taking of appeals or writs of error for delay only.

Sec. 478. If the supreme court affirm or modify the judgment or order, it may send the cause to the court below to have the same carried into effect, or it may itself issue the necessary process for this purpose, and direct such process to the sheriff of the proper county as the party may require.

Sec. 479. If, by the decision of the supreme court, the appellant or plaintiff in error becomes entitled to a restoration of any part of the money or property that was taken from him, by means of such judgment or order, either the supreme court, or the court below, may direct execution or writ of restitution to issue for the purpose of restoring to such appellant or plaintiff in error, his property or the value thereof.

Sec. 480. Property acquired by a purchaser in good faith, under a judgment subsequently reversed, shall not be affected by such reversal.

SEC. 481. The supreme court shall have power to enforce its mandates upon inferior courts and officers by fine and imprisonment, which imprisonment may be continued until obeyed.

SEC. 482. If a petition for rehearing be filed, the same shall suspend the decisions of the court on its presentation, or one of the judges, if in vacation, shall so order, in either of which case such decision shall be suspended until the next term.

SEC. 483. The petition for rehearing shall be the argument of the applicant therefor, and if the court think that such argument requires a reply, it shall so indicate to the other party and he may make reply within such time as said court shall allow, and with a view to a rehearing the court may extend the suspension of proceeding yet farther, if need be.

SEC. 484. The clerk shall docket the causes as the same are filed in his office, and shall arrange and set a proper number for trial each day of the term, placing together those from the same judicial district, and shall cause notice of the manner he has set such causes to be published and distributed in such manner as the court may direct.

SEC. 485. The court shall hear all the causes docketed, when not continued by consent, or for cause shown by the party, and the party may be heard orally or otherwise, in his discretion.

SEC. 486. No cause is decided until the opinion in writing is filed with the clerk.

SEC. 487. If remanded to the inferior court to be carried into effect, such decision and the order of the court thereon, being certified thereto and entered on the records of the court, shall have the same force and effect as if made and entered during the session of the court in that district.

SEC. 488. An assignment of error need follow no stated form, but must in a way as specific as the case will allow, point out the very error objected to; among several points in a demurrer, or in a motion, or instructions, or rulings in an exception, it must designate which is relied on as an error; and the court will only regard errors which are assigned with the required exactness; but the court must decide on each error assigned.

SEC. 489. All motions must be entered in the motion book, and shall stand over till the next morning after the morning on which entered; and till after having been publicly called by the court, unless the parties otherwise agree, and the adverse party shall be deemed to have notice of motion.

SEC. 490. When a review of an original paper in the action may be important to a correct decision of the appeal, or writ of error, the court may order the clerk of the court below to transmit the same, which he shall do in some safe mode to the clerk of the supreme court, who shall hold the same subject to the control of the court.

SEC. 491. The death of one or all of the parties shall not cause the proceedings to abate, but the names of the proper persons shall be substituted, as is provided in such cases in the district court, and the case may proceed. The court may also, in such case, grant a continuance when such a course will be calculated to promote the ends of justice.

SEC. 492. When an appellant, or plaintiff in error has no right, or further right to prosecute the appeal or writs of error, the appellee or defendants in error may move to dismiss; and if the grounds of the motion do not appear in the record, or by writing purporting to have been signed by the appellant or plaintiff in error and filed, they must be verified by affidavit.

Sec. 493. The appellee or defendant in error may, by answer filed and verified by himself, agent or attorney, plead any facts which render the taking of the appeal or writ of error improper, or destroy the right of appellant or plaintiff in error further prosecuting the same, to which answer the appellant or plaintiff in error may file a reply, likewise verified by himself, his agent or attorney, and the questions of law or fact therein shall be determined by the court.

Sec. 494. The service of all notices of appeal or writs of error, or in any way growing out of such rights, or connected therewith, and all notices in the supreme court, shall be in the way provided for the services of like notices in the district court, and they may be served by the same person and returned in the same manner; and the original notice of the appeal or writ of error must be returned immediately after service to the office of the clerk of the district court where the suit is pending.

Sec. 495. Executions issued from the supreme court shall be the same as those from the district court and attend with the same consequences, and shall be returnable in the same time.

Sec. 496. Whenever, in the foregoing chapter the words appeal, appellant or appellee, are used, they shall be construed when so required and applicable to law proceedings as contradistinguished from equitable actions, as suit in error, plaintiff in error or defendant in error.

## CHAPTER XLIII.

### SET-OFF.

Section
497. When set-off may be made.
498. Set-off when plaintiff is a trustee.
499. In actions by executors and administrators, of demand against testators and intestates.
500. Balance found for defendant.
Section
501. Set-offs by executors, trustees, &c., sued.
502. Must be set forth in answer.
503. When set-off equal or less than plaintiff's demand.
504. Judgment against plaintiff.

Sec. 497. The defendant in a civil action upon a contract expressed or implied, may set off any demand of a like nature against the plaintiff in interest, which existed and belonged to him at the time of the commencement of the suit. And in all such actions, other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due, which has been assigned to the plaintiff, he may also set off a demand of a like nature existing against the person to whom he was originally liable, or any assignee prior to the plaintiff, of such contract, provided such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, and was such a demand as might have been set off against such person to whom he was originally liable, or such assignee while the contract belonged to him.

Sec. 498. If the plaintiff be a trustee to any other, or if the action be in a name of the plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

Sec. 499. In actions brought by executors and administrators, demands against their testators and intestates, and belonging to defendant at the time of their death, may be set off by the defendant in the same manner as if the action had been brought by and in the name of the deceased.

Sec. 500. When a set off shall be established in an action brought by executors or administrators, and a balance found due to the defendant, the judgment rendered thereon against the plaintiff shall have the same effect as if the action had been originally commenced by the defendant.

Sec. 501. In actions against executors and administrators and against trustees and others, sued in their representative character, the defendants may set off demands belonging to their testators or intestates or those whom they represent, in the same manner as the person so represented would have been entitled to set-off the same, in an action against them.

Sec. 502. To entitle a defendant to a set-off he must set the same forth in his answer.

Sec. 503. If the amount of the set-off, duly established, be equal to the plaintiff's debt or demand, judgment shall be rendered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

Sec 504. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered in favor of the defendant for the amount thereof, but no such judgment shall be rendered against the plaintiff when the contract, which is the subject of the action, shall have been assigned before the commencement of such action, nor for any balance due from any other person than the plaintiff in the action.

## CHAPTER XLIV.

### COSTS IN CIVIL ACTIONS.

Section

505. Compensation of attorney, costs.
506. Shall be allowed to successful party.
507. Plaintiff when not entitled to costs.
508. Plaintiff entitled to no more costs than damages, when
509. Costs when several actions on one instrument, etc.
510. When defendant entitled to
511. To one or more of several defendants.
512. Amount of costs allowed.
513 Necessary disbursements in addition to.
514. Referee's fees.
515. In postponement of trial.
516. Where tender is made.
517 Plaintiff refusing to receive deposit.
518 In appeals from justice of peace.
519. Guardian, when responsible for.
520. Against executors, etc
521. Against assignee.
522. Against territory or county.
523. On appeal from inferior court.
524. Costs of appeal to supreme court.
525 If allowed, apportionment thereof.
526. Retaxation of.
527. Security for may be required of non-resident and plaintiff.

Sec. 505. The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums by way of indemnity for his expenses in the action, which allowances are termed costs.

Sec. 506. Costs shall be allowed the party in whose favor the judgment is rendered, except as is otherwise provided by law.

Sec. 507. The plaintiff shall not be entitled to costs in actions within the jurisdiction of a justice of the peace, which shall be commenced in the district court. The amount claimed shall be the test of jurisdiction.

Sec. 508. In an action for an assault and battery, or for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recover less than ten dollars, he shall be entitled to no more costs or disbursements than the damage recovered.

Sec. 509. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action against several parties, who might have been joined as defendants in the same action, no costs or disbursements shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within this territory.

Sec. 510. In all cases where costs and disbursements are not allowed to the plaintiff, the defendant shall be entitled to have judgment in his favor for the same.

Sec. 511. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such defendants as recover judgments in their favor, or either of them.

Sec. 512. When allowed to either party, costs to be called the attorney fee, shall be as follows:

1. In all actions settled before issue is joined, five dollars.
2. In all actions where judgment is rendered without a jury, ten dollars.
3. In all actions where judgment is rendered after impanneling a jury, fifteen dollars.
4. In all actions removed to the supreme court and settled before argument, ten dollars.
5. In all actions where judgment is rendered in the supreme court, after argument, fifteen dollars.

Sec. 513. The prevailing party, in addition to allowance for costs, as provided in the last section, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The disbursement shall be stated in detail and verified by affidavit, which shall be filed with the clerk of the court, within ten days after the judgment.

Sec. 514. The fees of referees shall be five dollars to each, for every day necessarily spent in the business of the reference and twenty cents per folio for writing testimony; but the parties may agree in writing upon any rate of compensation, and thereupon such rate shall be allowed.

Sec. 515. When an application shall be made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement.

Sec. 516. When in an action for the recovery of money, the defendant alleges in his answer, that, before the commencement of the action, he tendered to the plaintiff the full amount to which he is entitled, in such money as by agreement ought to be tendered, and thereupon brings into court, for the plaintiff, the amount tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant.

Sec. 517. If the defendant in any action pending, shall at any time deposit with the clerk of the court, for the plaintiff, the amount which he admits to be due, together with all costs that have accrued, and notify the plaintiff thereof, and such plaintiff shall refuse to accept the same in discharge of the action, and shall not afterwards recover a larger amount than that deposited with the clerk, exclusive of interest and cost, he shall pay all costs that may accrue from the time such money was so deposited.

Sec. 518. In all civil actions tried before a justice of the peace, in which an appeal shall be taken to the district court, and the party appellant shall not recover a more favorable judgment in the district court than before the justice of the peace, such appellant shall pay all costs.

Sec. 519. When costs are adjudged against an infant plaintiff, the guardian or person by whom he appeared in the action shall be responsible therefor, and payment may be enforced by execution.

Sec. 520. In action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by or against a person prosecuting in his own right, but such costs shall be chargeable only upon or collected of the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defense.

Sec. 521. When the cause of action, after the commencement of the action, by assignment, or in any other manner, becomes the property of a person not a party thereto, and the prosecution or defense is thereafter continued, such person shall be liable to the costs in the same manner as if he were a party, and payment thereof may be enforced by execution.

Sec. 522. In all actions prosecuted in the name and for the use of the territory, or in the name and for the use of any county, the territory or county shall be liable for costs in the same case and to the same extent as private parties.

Sec. 523. When the decision of a court of inferior jurisdiction, in an action or special proceeding, is brought before the supreme court or a district court for review, such proceedings shall, for purpose of costs, be deemed an action at issue upon a question of law, from the time the same is brought into the supreme court or district court, and costs thereon may be awarded and collected in such manner as the court shall direct, according to the nature of the case.

Sec. 524. In the following cases the costs of an appeal to the supreme court shall be in the discretion of the court:

1. When a new trial shall be ordered.
2. When a judgment shall be affirmed in part and reversed in part.

Sec. 525. In all actions and proceedings other than those mentioned in this chapter, where no provision is made for the recovery of costs, they may be allowed or not, and if allowed may be apportioned between the parties, in the discretion of the court.

Sec. 526. Any party aggrieved by the taxation of costs by the clerk of the court may, upon application, have the same re-taxed by the court in which the action or proceeding is had.

Sec. 527. When a plaintiff in an action resides out of the district or county, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until a bond, executed by two or more persons, be filed with the clerk, conditioned that they will pay such costs and charges as may be awarded against the plaintiff by judgment or in the progress of the action, not exceeding the sum of two hundred dollars. A new or additional bond may be ordered by the court or judge, upon proof that the original bond is insufficient security, and proceedings in the action stayed until such new or additional bond be executed and filed. The plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of a bond.

## CHAPTER XLV.

### OF COMMISSIONERS TO CONVEY REAL ESTATE.

SECTION
528. District court may appoint, when.
529. Deed of commissioner must refer to judgment of court.
530. What title passes by such conveyance.
531. On sale ordered by the court, what title passes.
SECTION
932. Conveyance must be examined and approved by court.
533. Signature of commissioner sufficient.
534. Conveyance, in what office to be recorded.
535. Court may enforce judgment to execute a conveyance of real estate.

SEC. 528. The several district courts may, whenever it is necessary, appoint a commissioner to convey real estate:

1. When by a judgment in an action, a party is ordered to convey real property to another, or any interest therein.

2. When real property, or any interest therein, has been sold under a special order of the court and the purchase money paid therefor.

SEC. 529. The deed of the commissioner shall so refer to the judgment authorizing the conveyance, that the same may be readily found, but need not recite the record in the case generally.

SEC. 530. A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

SEC. 531. A conveyance made in pursuance of a sale ordered by the court, shall pass to the grantee the title of all the parties to the action or proceeding.

SEC. 532. A conveyance by a commissioner shall not pass any right until it has been examined and approved by the court, which approval shall be endorsed on the conveyance and recorded with it.

SEC. 533. It shall be sufficient for the conveyance to be signed by the commissioner only, without affixing the name of the parties whose title is conveyed, but the names of the parties shall be recited in the body of the conveyance.

SEC. 534. The conveyance shall be recorded in the office in which by law it should have been recorded had it been made by the parties whose title is conveyed by it.

SEC. 535. In case of a judgment to compel a party to execute a conveyance of real estate, the court may enforce the judgment by attachment or sequestration, or appoint a commissioner to make the conveyance.

## CHAPTER XLVI.

### ACTIONS TO RECOVER AND AFFECTING REAL ESTATE.

SECTION
536. Who may bring, and against whom.
537. Substitution of landlord for tenant.
538. What shall be set forth in pleadings.
539. Defendant not to give evidence of title unless pleaded in answer, and judgment conclusive against landord, when substituted.
SECTION
540. What jury shall find by verdict.

SECTION
541. Plaintiff's recovery limited; what may be set off.
542. Verdict when right of possessson expires after action commenced.
543. Court may order survey of property.
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545. Shall not be prejudiced by alienation.
546. Mortgagee cannot maintain.
SECTION
547. Between tenants in common, what must appear.
548. Against lessee on failure to pay rent.
549. When judgment conclusive and upon whom.
550. Possession not affected by order granting new trial.
551. Title under donation law.

SEC. 536. Any person having a valid subsisting interest in real property and a right to the possession thereof, may recover the same by action in the district court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein.

SEC. 537. A defendant who is in actual possession may, for answer, plead that he is in possession only as a tenant of another, naming him and his place of residence, and thereupon the landlord, if he apply therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord do not apply to be made defendant within the time the tenant is allowed to answer, thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant on motion of the plaintiff he shall be required to appear and answer within ten days from notice of the pendency of the action and the order making him defendant, or such further notice as the court or judge thereof may prescribe.

SEC. 538. The plaintiff in such action shall set forth in his complaint the nature of his estate, claim or title to the property, and the defendant may set up a legal or equitable defense to plaintiff's claims; and the superior title, whether legal or equitable, shall prevail. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had.

SEC. 539. The defendant shall not be allowed to give in evidence any estate in himself or another in the property, or any license or right to the possession thereof unless the same be pleaded in his answer. If so pleaded, the nature and duration of such estate, or license or right to the possession, shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend. In an action against a tenant, the judgment shall be conclusive against a landlord who has been made defendant in place of the tenant, to the same extent as if the action had been originally commenced against him.

SEC. 540. The jury by their verdict shall find as follows:

1. If the verdict be for the plaintiff, that he is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature and duration of his estate in such property, part thereof, or undivided share or interest, in either, as the case may be.

2. If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property or part thereof, or license, or right to the possession of either established on the trial by the defendant, if any, in effect as the same is required to be pleaded.

Sec. 541. The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement, to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom he claims holding under color of title adversely to the claim of the plaintiff, in good faith, the value thereof at the time of trial shall be allowed as a set-off against such damages.

Sec. 542. If the right of the plaintiff to the possession of the property expire, after the commencement of the action and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages.

Sec. 543. The court or judge thereof, on motion, and after notice to the adverse party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof, for the purposes of the action.

Sec. 544. The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement; but if any unnecessary injury be done to the premises, he shall be liable therefor.

Sec. 545. An action for the recovery of the possession of real property against a person in possession, cannot be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant do not satisfy the judgment recovered for damages for withholding the possession, such damages may be recovered by action against the purchaser.

Sec. 546. A mortgage of real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property, without a foreclosure and sale according to law.

Sec. 547. In an action by a tenant in common, or a joint tenant of real property against his co-tenant, the plaintiff must show, in addition to his evidence of right, that the defendant either denied the plaintiff's right or did some act amounting to such denial.

Sec 548. When in the case of a lease of real property and the failure of tenant to pay rent, the landlord has a subsisting right to re-enter for such failure; he may bring an action to recover the possession of such property, and such action is equivalent to a demand of the rent and a re-entry upon the property. But if at any time before the judgment in such action, the lessee or his successor in interest as to the whole or a part of the property, pay to the plaintiff, or bring into court the amount of rent then in arrear, with interest and cost of action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to continue in the possession according to the terms of the lease.

Sec. 549. In an action to recover the possession of real property, the judgment therein shall be conclusive as to the estate in such property and the right to the possession thereof, so far as the same is thereby determined, upon the party against whom the same is given, and against all persons claiming from, through or under such party after the commencement of such action, except as in this section provided. When service of the notice is made by publication, and judgment is given for failure to answer, at any time within two years from the entry thereof, the defendant or his successor in interest as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order vacating the judgment and granting him a new trial, upon the payment of the costs of the action.

SEC. 550. If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in the preceding section, such possession shall not be thereby affected in any way; and if judgment be given for defendant in the new trial, he shall be entitled to restitution by execution in the same manner as if he were plaintiff.

## CHAPTER XLVII.

SEC. 551. In an action at law, for the recovery of the possession of real property, if either party claim the property as a donee of the United States, and under the act of congress approved September 27th, 1850, commonly called the "Donation law," or the acts amendatory thereof, such party, from the date of his settlement thereon, as provided in said act, shall be deemed to have a legal estate in fee, in such property, to continue upon condition that he perform the conditions required by such acts, which estate is unconditional and indefeasable after the performance of such conditions. In such action, if both plaintiff and defendant claim title to the same real property, by virtue of settlement, under such acts, such settlement and performance of the subsequent condition shall be prima facie presumed in favor of the party having or claiming under the elder certificate, or patent, as the case may be, unless it appears upon the face of such certificate or patent that the same is absolutely void. Any person in possession, by himself or his tenant, of real property, and any private or municipal corporation in possession by itself or its tenant of any real property, or when such real property is not in the actual possession of any one, any person or private or municipal corporation claiming title to any real property under a patent from the United States, or during his or its claim of title to such real property under a patent from the United States for such real estate, may maintain a civil action against any person or persons, corporations or associations claiming an interest in said real property or any part thereof, or or any right thereto adverse to him, them, or it, for the purpose of determining such claim, estate, or interest; and where several persons, or private or municipal corporations are in possession of, or claim as aforesaid, separate parcels of real property, and an adverse interest is claimed or claim made in or to any such parcels, by any other person, persons, corporations or associations, arising out of a question, conveyance, statute, grant, or other matter common to all such parcels of real estate, all or any portion of such persons or corporations so in possession, or claiming such parcel of real property may unite as plaintiffs in such suit to determine such adverse claim or interest against all persons, corporations or associations claiming such adverse interest.

# CHAPTER XLVIII.

## PARTITION OF REAL PROPERTY.

SECTION

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SEC. 552. When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, an action may be maintained by one or more of such persons, for a partition thereof, according to the respective rights of the persons interested therein, and for sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

SEC. 553. The interest of all persons in the property shall be set forth in the complaint specifically and particularly as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

SEC. 554. The plaintiff may, at his option, make creditors having a lien upon the property or any portion thereof, other than by a judgment or decree, defendants in the suit. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

SEC. 555. The notice shall be directed by name to all the tenants in common, who are known, and in the same manner to all lien creditors who are made parties to the suit, and generally to all persons unknown, having or claiming an interest or estate in the property.

SEC. 556. If a party, having a share or interest in, or lien upon the property, be unknown, or either of the known parties reside out of the territory or cannot be found therein, and such fact be made to appear by affidavit, the notice may be served by publication, as in ordinary cases. When service is made by publication, the notice must contain a brief description of the property which is the subject of the suit.

Sec. 557. The defendant shall set forth in his answer, the nature, and extent of his interest in the property, and if he be a lien creditor, how such lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security.

Sec. 558. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined in such suit, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the decree for partition or sale is given.

Sec. 559. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall decree a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees, therefor, and shall designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

Sec. 560. In making the partition, the referees shall divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them therein. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

Sec. 561. The court may confirm or set aside the report in whole or in part, and if necessary, appoint new referees. Upon the report being confirmed a decree shall be entered that such partition be effectual forever, which decree shall be binding and conclusive:

1. On all parties named therein, and their legal representatives who have at the time any interest in the property divided, or any part thereof as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder or inheritance of such property or any part thereof, after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life.

2. On all persons interested in the property to whom notice shall have been given by publication.

3. On all other persons claiming from or through such parties or persons or either of them.

Sec. 562. Such decree and partition shall not affect any tenants for years or for life, of the whole of the property which is the subject of partition, nor shall such decree and partition preclude any persons, except such as are specified in the last section, from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made.

Sec. 563. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff and may be allowed as costs.

Sec. 564. If the referees report to the court that the property, of which partition shall have been decreed, or any separate portion thereof is so situated that a partition thereof cannot be made without great prejudice to the owners, and the court is satisfied that such report is correct, it may thereupon by an order direct the referees to sell the property or separate portion thereof.

Sec. 565. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered sold.

Sec. 566. Before making an order of sale, if lien creditors, other than those by judgment or degree, have not been made parties, the court, on motion of either party, shall order the plaintiff to file a supplemental complaint, making such creditors defendants.

Sec. 567. If an order of sale be made before the distribution of the proceeds thereof, the plaintiff shall produce to the court the certificate of the auditor of the county where the property is situated, showing the liens remaining unsatisfied, if any, by judgment or decree upon the property or any portion thereof, and unless he do so the court shall order a referee to ascertain them.

Sec. 568. If it appear by such certificate or reference, in case the certificate is not produced, that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby respectively, and the order of priority in which they are entitled to be paid out of the property.

Sec. 569. The plaintiff must cause a notice to be served at least twenty days before the time for appearance on each person having such lien by judgment or decree, to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely on his judgment or decree.

Sec. 570. The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts due thereon, or secured thereby, and their priority respectively, and whether contingent or absolute. He shall attach to his report the proof of service of the notices and the evidence before him.

Sec. 571. The report of the referee may be excepted to by either party to the suit, or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the territory, or his residence therein be unknown, and that fact appear by affidavit, the court or judge thereof may by order direct that service of the notice may be made upon his agent or attorney of record, or by publication thereof, for such time and in such manner as the order may prescribe.

SEC. 572. If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the suit, and upon the lien creditors who have been duly served with the notice to appear before the referee, as provided in section 569.

SEC. 573. The proceeds of the sale of the encumbered property shall be distributed by the decree of the court, as follows:

1. To pay its just proportion of the general costs of the suit.
2. To pay the costs of the reference.
3. To satisfy the several liens in their order of priority, by payment of he sums due, and to become due, according to the decree.
4. The residue among the owners of the property sold, according to their respective shares.

SEC. 574. Whenever any party to the suit, who holds a lien upon the property or any part thereof, has other securities for the payment of the amount of such lien, the court may in its discretion, order such sureties to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

SEC. 575. The proceedings to ascertain the amount of the liens, and to determine their priority as above provided, or those hereinafter authorized to determine the rights of parties to funds paid into court, shall not delay the sale, nor affect any other party, whose rights are not involved in such proceedings.

SEC. 576. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But if no such direction be given, all such proceeds and securities shall be paid into court, or deposited as directed by the court.

SEC. 577. When the proceeds of sale of any shares or parcel belonging to persons who are parties to the suit and who are known, are paid into court, the suit may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original suit.

SEC. 578. All sales of real property made by the referees shall be made by public auction, to the highest bidder, in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property, or any part of it is to be sold, subject to a prior estate, charge or lien, that shall be stated in the notice.

SEC. 579. The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises, of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants or parties out of the territory.

SEC. 580. The referees may take separate mortgages, and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his successors in office; and for the shares of any known owner of full age, in the name of such owner.

Sec. 581. When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the suit, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but if in the judgment of the court, a due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered.

Sec. 582. Any person entitled to an estate for life or years in any undivided part of the property, whose estate shall have been sold, shall be entitled to receive such sum in gross as may be deemed a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged and filed with the clerk.

Sec. 583. If such consent be not given, as provided in the last section, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life, or years, and shall order the same to be deposited in court for that purpose.

Sec. 584. If the persons entitled to such estate, for life or years, be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

Sec. 585. In all cases of sales in partition, when it appears that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportionate value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties.

Sec. 586. In all cases of sales of property the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately or otherwise, if the court so directs.

Sec. 587. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase, nor shall the guardian of an infant be an interested party in the purchase of any real property being the subject of the suit, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Sec. 588. After completing the sale, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report shall be filed with the clerk.

Sec. 589. The report of sale may be excepted to in writing by any party entitled to a share of the proceeds. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale.

Sec. 590. When a party entitled to a share of the property, or an encumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belong to him.

SEC. 591. When there are proceeds of sale belonging to an unknown owner, or to a person without the territory who has no legal representative within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into the court or otherwise deposited by order of the court, the same shall be invested in securities on interest for the benefit of the persons entitled thereto.

SEC. 592. When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

SEC. 593. When security is taken by the referees on a sale, and the parties interested in such security by an instrument in writing under their hands, delivered to the referees, agree upon the share and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

SEC. 594. The clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his office all securities taken and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

SEC. 595. When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of the inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

SEC. 596. When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale, to his general guardian, or the special guardian appointed for him in the suit, upon giving the security required by law, or directed by order of the court.

SEC. 597. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees, on executing a bond with sufficient sureties, approved by the judge of the court, conditioned that he faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

SEC. 598. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in common or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without suit and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares or parts to which they may respectively be entitled, and upon an order of the court.

SEC. 599. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the decree. In that case there shall be a lien on the several shares, and the decree may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

## CHAPTER XLIX.

### OF WASTE AND TRESPASS.

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600 Wrongs heretofore remediable by action of waste, actionable as other wrongs.
601. Action for waste and judgment therein.
602 Action for trespass in particular cases and judgment therein.
603. If trespass casual or involuntary, judgment.
604. Of injunction to restrain waste.

SEC. 600. Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs.

SEC. 601. If a guardian, tenant in severalty, or in common, for life or for years, of real property, commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant; in which action there may be judgment for treble damages, forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action, to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice.

SEC. 602. Whenever any person shall cut down, girdle or otherwise injure, or carry off any tree, timber or shrub on the land of another person, or on the street or highway in front of any person's house, village, town or city lot, or cultivated grounds, or on the commons or public grounds of any village, town or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town or city against the person committing such trespasses or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be.

SEC. 603. If upon trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodlands, for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages.

SEC. 604. When any two or more persons are opposing claimants under the laws of the United States to any land in this territory, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages and there is imminent danger that unless restrained such waste will be committed, the party, on filing his complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders.

## CHAPTER L.

### NUISANCE.

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607. Warrant for abatement.
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SEC. 605. The obstruction of any highway or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, or whatever is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property, is a nuisance, and the subject of an action for damages and other and further relief.

SEC. 606. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance. If judgment be given for the plaintiff in such action, he may in addition to the execution to enforce the same, on motion, have an order allowing a warrant to issue to the sheriff to abate such nuisance. Such motion must be made at the term at which judgment is given, and shall be allowed of course, unless it appear on the hearing that the nuisance has ceased or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may have the defendant enjoined.

SEC. 607. If the order be made, the clerk shall thereafter, at anytime within six months, when requested by the plaintiff, issue such warrant directed to the sheriff, requiring him forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his proceedings endorsed thereon. The expenses of abating the nuisance may be levied by the sheriff on the property of the defendant, and in this respect the warrant is to be deemed an execution against property.

SEC 608. At any time before the order is made or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance himself, upon his giving bond to the plaintiff in a sufficient amount with one or more sureties, to the satisfaction of the court or judge thereof, that he will abate it within the time and in the manner specified in such order. The sureties shall justify as bail upon arrest. If the defendant fails to abate such nuisance within the time specified, the warrant for the abatement of the nuisance may issue as if the same had not been stayed.

## CHAPTER LI.

### FORECLOSURE OF MORTGAGE.

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SECTION
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619. Mortgagee may proceed on separate promise; in foreclosure of mortgage where there is separate promise of judgment for deficiency.
620. Order of sale, what judgment for deficiency.
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SEC. 609. When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the district court of the district or county where the land, or some part thereof, lies, to foreclose the equity of redemption contained in the mortgage.

SEC. 610. When there is no express agreement in the mortgage nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged.

SEC. 611. In rendering judgment of foreclosure the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interest and costs at any time before sale, shall satisfy the judgment.

SEC. 612. When there is an express agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, the court shall direct in the decree of foreclosure that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor.

SEC. 613. The decree may be enforced by execution, as an ordinary decree for the payment of money. The execution shall contain a description of the mortgaged property. The sheriff shall endorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed to sell the mortgaged premises, or so much thereof as may be necessary to satisfy the judgment, interests, and costs, upon giving the notice prescribed in section 359, relating to sales of property under execution. And if any part of the judgment, interest and costs, remain unsatisfied, the sheriff shall forthwith proceed to levy upon any property of the defendant, not exempt from execution, and all subsequent proceedings under said execution shall conform, except as herein provided, to the provisions regulating sales of property upon executions.

SEC. 614. The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure.

SEC. 615. Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or installment of the principal, and there are other installments not due, if the defendant pay into the court the principal and interest due, with costs, at any time before the final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue.

SEC. 616. In such cases, after final judgment, the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interests of the parties, the court shall direct so much only of the premises to be sold, as will be sufficient to pay the amount then due on the mortgage with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected.

SEC. 617. If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue do not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of the sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgage debtor, his heirs and assigns.

SEC. 618. The provisions herein contained, so far as the same shall be applicable, shall govern in actions for the foreclosure of chattel mortgages or bills of sale creating liens on personal property.

SEC. 619. The mortgagee or holder of the lien may proceed upon his mortgage or lien, if there be a separate obligation in writing to pay the same, secured by said mortgage or lien, he may bring suit upon such separate promise. When he proceeds on the mortgage, if there be a specific agreement therein contained for the payment of a certain sum, or there is a separate obligation for the said sum, in addition to a decree of sale of mortgaged property, judgment shall be rendered for the amount due upon said mortgage or other instrument, the payment of which is thereby secured. The decree shall direct the sale of the mortgaged property, and if the proceeds of said sale be insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the mortgage debtor, not exempt from execution, for the sum remaining unsatisfied.

SEC. 620. In all actions of foreclosure where there is a decree for the sale of the mortgaged premises or property, and a judgment over for any deficiency remaining unsatisfied after applying the proceeds of the sale of mortgaged property, further levy and sales upon other property of the judgment debtor may be made under the same execution. In such sales it shall only be necessary to advertise notice for two weeks in a newspaper published in the district or county where the said property is located, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in such county.

SEC. 621. When sales of other property not embraced in the mortgage or decree of sale are made under the execution to satisfy any deficiency remaining due upon judgment, two weeks' publication of notice of such sale shall be sufficient. Such notice shall be published in a newspaper printed in the district or county where the property is situated, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in said district or county.

SEC. 622. Judgments over for any deficiency remaining unsatisfied after application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien upon the property of a judgment debtor as other judgments, and the collections thereof enforced in the same manner.

## CHAPTER LII.

### THE SPECIFC PERFORMANCE OF CERTAIN CONTRACTS.

SECTION
623. Decedent's contract in writing to be performed by executor, etc.
624 Petitions by party claiming conveyance; procedure
625 Hearing and determination of petition.
626. Decree of conveyance
627. If decedent resident executor shall make conveyance
628. If deceased non-resident commissioner to convey.
629. What conveyance shall recite and pass
630 Appeal to supreme court allowed
631. Certified copy of decree entitles party to possession
632 Representative of party entitled may proceed
633. Of depositions of witnesses
634 Any party interested may take depositions.

SEC. 623. If any person who is bound by contract, in writing, to convey any real estate, shall die before making the conveyance, the district court having the jurisdiction over the county in which such real estate or any portion thereof, is situate, may make a decree authorizing and directing the conveyance of such real estate to the person entitled thereto, in all cases, when such deceased person, if living, might be compelled to make such conveyance.

SEC. 624. On filing and presentation of a petition of any person claiming to be entitled to such conveyance under such contract, setting forth the facts upon which such claim is predicated, the district court or the judge thereof, shall make an order appointing a time and place for hearing such petition, which shall be at some day of a regular term of said district court and shall also order notice of the pendency thereof and the time and place of the hearing, to be published four successive weeks next before such hearing, in such newspaper in the territory as the court shall designate.

SEC. 625. At the time and place appointed for such hearing or at such other time as the same may be adjourned to, upon proof by affidavit of the publication of the notice, the court shall proceed to a hearing, and all persons interested as creditors, heirs, devisees or personal representatives, may appear and resist such petition, by filing their objections in writing, and the court may examine on oath the petitioners, and all witnesses who may be produced on the hearing by any interested party for that purpose.

Sec. 626. After a full hearing upon such petition and objections, of the facts and circumstances of the claim, if the court is satisfied that the petitioner is entitled in equity to a conveyance of the real estate described in the petition, or any part thereof, or any interest therein, the court shall make a decree authorizing and directing the execution and delivery of a conveyance to the petitioner.

Sec. 627. Such conveyance shall be executed by the executor or administrator of the estate of the deceased, if the deceased was a resident of or had his place of abode at the time of his death in this territory, or if he died therein; but in such case no decree for conveyance shall be made, unless the executor or administrator shall have been personally served with a copy of the said petition and the notice provided for in section 624 for at least two weeks prior to the time appointed for the hearing.

Sec. 628. If the deceased died out of the territory and not having been a resident thereof at the time of his death, such conveyance shall be executed by a commissioner to be appointed by the court in the decree, for that purpose, but in such case in addition to the notice provided for in section 624, it shall appear to the satisfaction of the court at the hearing, that the executor, or administrator of such deceased duly appointed in another state, territory or country, or his heirs or devisees shall have had reasonable notice personally of the pendency of said petition, and of the time and place appointed for such hearing. And such foreign executor or administrator shall have the same right at the hearing, or on appeal, to file objections and resist the claim of the petitioners, as an executor or administrator appointed under the laws of the territory would have; and it shall not be necessary in such case that an administration of the estate of the deceased be had in the territory, to authorize the decree of conveyance prayed for, if the district court upon the hearing shall so find.

Sec. 629. A conveyance executed under the provisions of this chapter shall so refer to the decree authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally, and the conveyance made in pursuance of a decree shall pass to the grantee all the estate, right, title and interest contracted to be conveyed by the deceased, as fully as if the contracting party himself were still living and executed the conveyance in pursuance of such contract.

Sec. 630. Any party interested may, within six months from the rendition of the decree, appeal therefrom to the supreme court, in the same manner as appeals are taken and prosecuted from final decrees or judgments in equity causes; but if no appeal be taken from such decree, within the time limited therefor, or if such decree be affirmed on appeal, it shall be the duty of the executor, administrator or commissioner to execute and deliver the conveyance according to the directions contained in the decree; and a certified copy thereof shall be recorded with the deed in the office of the auditor of the county where the lands lie, and shall be conclusive evidence of the correctness of the proceedings and of the authority of the executor, administrator or commissioner to make such conveyance.

Sec. 631. A copy of the decree for the conveyance made by the district court and duly certified and recorded in the office of the auditor of the county wherein the land is situate, shall give to the person entitled to the conveyance a right to the immediate possession of the land contracted for and of holding the same according to the terms of the intended conveyance, in like manner and with like effect, as if they had been conveyed in pursuance of the decree.

SEC. 632. If the person to whom the conveyance was to be made shall die before the commencement of the proceedings according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the conveyance under him, as heir, devisee or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of persons entitled, may commence such proceedings or prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the same persons, who would have been entitled to it, or in the execution or administration for their benefit.

SEC. 633. The testimony of witnesses in support of the claim of the petitioner may be taken by deposition before any officer authorized to administer oaths, whenever the deposition of such witnesses might be taken to be used in the trial of a civil action in the district court. But notice of the particular time and place of taking such deposition shall be published by the petitioner, in the paper required to be designated by section 624, for three successive weeks prior to taking the same, which notice shall also state the name of the officer before whom the deposition is to be taken, and the name of the witnesses whose testimony is proposed to be taken, at such time and place. Any party interested in the estate may appear and cross-interrogate such witnesses, and the manner of examination and the form of such deposition shall be in conformity with the chapter regulating depositions of witnesses residing in the territory, although such witnesses may not reside therein.

SEC. 634. Any party interested in the estate and resisting the claim of the petitioner, may, after filing his objections, take the testimony of witnesses in his behalf in like manner, and as in an affidavit for continuance in civil actions upon good cause shown and for that purpose the court may postpone the final hearing of such petition until the testimony can be taken.

## CHAPTER LIII.

### CHANGE OF PERSON'S NAME.

SECTION
635. Persons may petition, giving reasons.

SEC. 635. Any person desiring a change of his name or that of his child or ward, may apply therefor to the district court of the county in which he resides, by petition setting forth the reasons for such change; thereupon such court in its discretion may order a change of the name and thenceforth the new name shall be in place of the former.

## CHAPTER LIV.

### NE EXEAT.

SECTION
636. Actions may be commenced on contract, before time for performance; when.
637. Order of arrest; bond of plaintiff.
638. Defendant to give special bail, or be committed.
639. Defendant may be discharged, when.
SECTION
640. In whose favor may be had.
641. Defendant may have habeas corpus.
642. Proceedings may be had before justice of the peace.
643. Proceedings in district where defendants found.

SEC. 636. Actions may be commenced upon any agreement in writing before the time for the performance of the contract expires, when the plaintiff or his agent shall make and file an affidavit with the clerk of the proper court, that the defendant is about to leave the territory without performing or making provisions for the performance of the contract, taking with him property, moneys, credits or effects subject to execution, with intent to defraud plaintiff.

Sec. 637. Upon such affidavit being filed, the clerk shall issue an order of arrest and bail, directed to the sheriff, which shall be issued, served and returned, in all respects as such orders in other cases; before such order shall issue, the plaintiff shall file in the office of the clerk a bond with sufficient surety to be approved by the clerk, conditioned that the plaintiff will pay the defendant such damages and costs as he shall wrongfully sustain by the occasion of the suit, which sureties shall justify as bail upon an arrest.

Sec. 638. The sheriff shall require the defendant to enter into a recognizance of special bail, with sufficient surety, personally to appear on the first day of the court at its next term, and abide the order of the court, and in default thereof the defendant shall be committed to prison until discharged in due course of law; such special bail shall be liable for the principal and shall have a right to arrest and deliver him up, as in other cases, and the defendant may give other bail.

Sec. 639. Instead of giving special bail, as above provided, the defendant shall be entitled to his dischrrge from custody if he will secure the performance of the contract to the satisfaction of the plaintiff.

Sec. 640. This proceeding may be had in favor of any surety or other person jointly bound with the defendant. It may also be prosecuted by the person in whose favor the contract exists, against any one or more of the persons bound thereby, upon filing such affidavit, when the co-contractors are non-residents or probably insolvent, or at the request of any of them when they are residents and solvent.

Sec. 641. The defendant may have the same remedy by writ of habeas corpus as in other cases of arrest and bail.

Sec. 642. The proceedings may be had before justices of the peace in all cases within their jurisdiction.

Sec. 643. The affidavit and bond may be filed, and proceedings had in any district where the defendants may be found.

## CHAPTER LV.

### ACTIONS OF SURETIES AGAINST PRINCIPAL.

Section
644 Surety may require action instituted.
645 When surety to be discharged
646 Trial between co-defendants not to affect plaintiff.
647 When property of principal is first to be exhausted.

Section
648. Judgment satisfied by sureties, does not discharge principal
649. Sureties paying judgment remedy against co-defendants
650. No surety shall confess judgment.
651. Extended to legal representatives.

Sec. 644. Any person bound as surety upon any contract in writing for the payment of money or the performance of any act, when the right of action has accrued, may require by notice in writing the creditor or obligee forthwith to institute an action upon the contract.

Sec. 645. If the creditor or obligee shall not proceed within a reasonable time to bring his action upon such contract, and prosecute the same to judgment and execution, the surety shall be discharged from all liability thereon.

SEC. 646. When any action is brought against two or more defendants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon a written complaint to the court, cause the question of securityship to be tried and determined upon the issues made by the parties at the trial of the cause, or at any time before or after the trial, or at a subsequent term, but such proceedings shall not affect the proceedings of the plaintiff.

SEC. 647. If the finding upon such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution upon, and first exhaust the property of the principal before a levy shall be made upon the property of the surety, and the clerk shall indorse a memorandum of the order upon the execution.

SEC. 648. When any defendant, surety in a judgment or special bail or replevin or surety in a delivery bond or replevin bond, or any person being surety in any bond whatever, has been or shall be compelled to pay any judgment or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer or other surety upon his official bond shall be compelled to pay any judgment or any part thereof by reason of any default of such officer, except for failing to pay over money collected, or for wasting property levied upon, the judgment shall not be discharged by such payment, but shall remain in force for the use of the bail, surety, officer or other person making such payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for his use.

SEC. 649. Any one of several judgment defendants, and any one of several replevin bail having paid and satisfied the plaintiff, shall have the remedy provided in the last section against the co-defendants and co-sureties to collect of them the rateable proportion each is equitably bound to pay.

SEC. 650. No surety or his representative shall confess judgment or suffer judgment by default in any case where he is notified that there is a valid defense, if the principal will enter himself defendant to the action and tender to the surety or his representatives good security to indemnify him, to be approved by the court.

SEC. 651. The foregoing provisions of this chapter shall extend to heirs, executors, and administrators of deceased persons, but the provisions of section six hundred and forty five shall not operate against persons under legal disabilities.

## CHAPTER LVI.

### SUITS ON OFFICIAL BONDS, FINES AND FORFEITURES.

SECTION

652. Official bonds, to whom deemed a security.
653. Who may maintain action thereon.
654. When leave of court must first be obtained
655. Judgment no bar to action for other delinquency.
656 Judgment against surety, for what can be given.
657. Who may sue for fines and forfeitures.
658 For penalties not to exceed amount of.
659. Collusory judgment will not bar recovery by another person.
660. Disposition of fines and forfeitures.

SEC. 652. The official bond of a public officer, to the territory, or to any county, city, town or other municipal or public corporation of like character therein, shall be deemed a security to the territory, or to such county, city, town or other municipal or public corporation, as the case may be, and also to all persons severally, for the official delinquencies against which it is intended to provide.

SEC. 653. When a public officer by official misconduct or neglect of duty, shall forfeit his official bond or render his sureties therein liable upon such bond, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action at law thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled.

SEC. 654. Before an action can be commenced by a plaintiff, other than the territory, or the municipal or public corporation named in the bond, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the bond and an affidavit of the plaintiff, or some person in his behalf, showing the delinquency. But if the matter set forth in his affidavit be such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant, on motion, shall be entitled to judgment of non-suit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor, judgment shall be given accordingly.

SEC. 655. A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same bond for another delinquency.

SEC. 656. In an action upon an official bond, if judgments have been recovered against the surety therein other than by confession, equal in the aggregate to the penalty or any part thereof of such bond, and if such recovery be established on the trial, judgment shall not be given against such surety for an amount exceeding such penalty, or such portion thereof as is not already recovered against him.

SEC. 647. Fines and forfeitures may be recovered by an action at law in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them.

SEC. 658. When an action shall be commenced for a penalty, which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense.

SEC. 659. A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant wholly or partially from the consequences contemplated by law, in case when the penalty or forfeiture is given wholly or partly to the person who prosecutes, shall not bar the recovery of the same by another person.

SEC. 660. Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid into the school fund of the proper county. Whenever, by the provisions of law, any property real or personal shall be forfeited to the territory, or to any officer for its use, the action for the recovery of such property may be commenced in any county where the defendant may be found or where such property may be.

## CHAPTER LVII.

### ACTIONS BY AND AGAINST PUBLIC CORPORATIONS.

SECTION
661. How and for what causes maintained.
662. Against public corporations; causes.
663. Pleadings, how verified.

SECTION
664. Judgment against, how enforced.
665. Officer compelled to satisfy judgment.

SEC. 661. An action at law may be maintained by any county, incorporated town, school district or other public corporation of like character in this territory, in its corporate name, and upon a cause of action accruing to it, in its corporate character and not otherwise, in either of the following cases:

1. Upon a contract made with such public corporation.
2. Upon a liability prescribed by law in favor of such public corporation.
3. To recover a penalty or forfeiture given to such public corporation.
4. To recover damages for an injury to the corporate rights or property of such public corporation.

SEC. 662. An action may be maintained against a county or other of the public corporations mentioned or described in the preceding section, either upon a contract made by such county, or other public corporation in its corporate character and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such county or other public corporation.

SEC. 663. In such actions the pleadings of the public corporation shall be verified by any of the officers representing it in its corporate capacity in the same manner as if such officer was a defendant in the action, or by the agent or attorney thereof, as in ordinary actions.

SEC. 664. If judgment be given for the recovery of money or damages against such county or other public corporation, no execution shall issue thereon for the collection of such money or damages, but such judgment in such respect shall be satisfied as follows:

1. The party in whose favor such judgment is given may at any time thereafter, when execution might issue on a like judgment against a private person, present a certified transcript of the docket thereof to the officer of such county or other public corporation who is authorized to draw orders on the treasury thereof.

2. On the presentation of such transcript such officer shall draw an order on such treasurer for the amount of the judgment, in favor of the party for whom the same was given. Thereafter such order shall be presented for payment and paid with like effect and in like manner as other orders upon the treasurer of such county or other public corporation.

3. The certified transcript herein provided for shall not be furnished by the clerk unless at the time an execution might issue on such judgment if the same were against a private person, nor until satisfaction of the same judgment in respect to such money or damages be acknowledged as in ordinary cases. The clerk shall include in the transcript the memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the transcript contain such memorandum, no order upon the treasurer shall issue thereon.

SEC. 665. Should the proper officer of said corporation fail or refuse to satisfy said judgment, as in the preceding section provided, an attachment may be issued to compel his performance of said duty.

# CHAPTER LVIII.

## HABEAS CORPUS.

SECTION
666. Every person shall have the benefit of.
667. Application for writ of.
668. Writs granted in term or vacation, and without delay.
669. To whom directed, and what to command.
670. If directed to sheriff, to be delivered by clerk
671. When directed to any other person.
672. How served, when person to cannot be found
673. Immediate return to be made.
674 Return to be verified, and what it shall contain.
675. Traverse and decision on said return.
676. Cause to be heard and decided summarily.
677. Legality of custody not to be inquired into in certain cases.
SECTION
678. Court may discharge, commit, admit to bail, etc.
679. Writ to admit to bail, person interested in detention to be notified.
680. Court may compel attendance of witnesses, etc.
681 No officer liable to action for obeying writ.
682. When person may be brought before court by warrant.
683. Court may command apprehension of person causing restraint.
684. Writ how executed and returned.
685. Temporary order may be made; court may change custody of prisoner.
686. May be served on Sunday.
687. Writs, etc., by whom to be issued, etc., returns, amendments.
688. In favor of parents, etc., of infants and insane.

SEC. 666. Every person restrained of his liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when illegal.

SEC. 667. Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

1. By whom the petitioner is restrained of his liberty, and the place where, (naming the parties if they are known, or describing them if they are not known.)

2. The cause or pretense of the restraint according to the best of the knowledge and belief of the applicant.

3. If the restraint be alleged to be illegal, in what the illegality consists.

SEC. 668. Writs of habeas corpus may be granted by the supreme court or district court, or by any judge of either court, whether in term or vacation, and upon application the writ shall be granted without delay.

SEC. 669. The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the court or judge at such time and place as the court or judge shall direct to do and receive what shall be ordered concerning him, and have then and there the writ.

SEC. 670. If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay.

SEC. 671. If the writ be directed to any other person, it shall be delivered to the sheriff and shall be by him served by delivering the same to such person without delay.

SEC. 672. If the person to whom such writ is directed cannot be found or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by posting the same on some conspicuous place, either of his dwelling house or where the party is confined or under restraint.

SEC. 673. The sheriff or other person to whom the writ is directed shall make immediate return thereof, and if he refuse after due service to make return, the court shall enforce obedience by attachment.

SEC. 674. The return must be signed and verified by the person making it, who shall state:

1. The authority or cause of the restraint of the party in his custody.

2. If the authority shall be in writing, he shall return a copy and produce the original on the hearing.

3. If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer. He shall produce the party at the hearing unless prevented by sickness or infirmity, which must be shown in the return.

Sec. 675. The court or judge, if satisfied of the truth of the allegation of sickness or infirmity, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced, or for other good cause. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in evidence. The new matter shall be verified, except in cases of commitment on a criminal charge. The return and pleadings may be amended without causing a delay.

Sec. 676. The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuation thereof, shall discharge the party.

Sec. 677. No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired, in either of the cases following:

1. Upon any process issued on any final judgment of a court of competent jurisdiction.

2. For any contempt of any court, officer or body having authority in the premises to commit; but an order of commitment, as for a contempt upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications.

3. Upon a warrant issued from the district [court] upon an indictment or information.

Sec. 678. No person shall be discharged from an order of commitment issued by any judicial or peace officer for want of bail, or in cases not bailable on account of any defect in the charge or process, or for alleged want of probable cause; but in all cases the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, admit to bail or re-commit the prisoner, as may be just and legal, and recognize witnesses when proper.

Sec. 679. The writ may be had for the purpose of admitting a prisoner to bail in civil and criminal actions. When any person has an interest in the detention, and the prisoner shall not be discharged until the person having such interest is notified.

Sec. 680. The court or judge shall have power to require and compel the attendance of witnesses, and to do all other acts necessary to determine the case.

Sec. 681. No sheriff or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge made thereon.

Sec. 682. Whenever it shall appear by affidavit that any one is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ can be enforced, such court or judge may cause a warrant to be issued reciting the facts, and directed to the sheriff or any constable of the county, commanding him to take the person thus held in custody or restraint, and forthwith bring him before the court or judge to be dealt with according to the law.

Sec. 683. The court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

Sec. 684. The officer shall execute the writ by bringing the person therein named before the court or judge, and the like return of proceedings shall be required and had as in case of writs of habeas corpus.

Sec. 685. The court or judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings that justice may require. The custody of any party restrained may be changed from one person to another, by order of the court or judge.

Sec. 686. Any writ or process authorized by this chapter may be issued and served, in cases of emergency, on Sunday.

Sec. 687. All writs and other process authorized by this chapter shall be issued by the clerk of the court, and sealed with the seal of such court, and shall be served and returned forthwith, unless the court or judge shall specify a particular time for such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed and temporary commitments when necessary.

Sec. 688. Writs of habeas corpus shall be granted in favor of parents, guardians, masters and husbands, and to enforce the rights, and for the protection of infants and insane persons; and the proceedings shall in all cases conform to the provisions of this chapter.

## CHAPTER LIX.

### MANDATE AND PROHIBITION.

Section
689. Writs of, may issue from supreme and district court
690. District court, jurisdiction of.
691. To whom and for what mandate may issue.
692. How issued and made returnable.
693. First writ may be alternative or peremptory.
694. Issues upon return tried as civil action.
695. When plaintiff may recover damages.
Section
696 Court may enlarge time of return and pleadings, etc.
697. Obedience to enforce such writs, how enforced.
698. Writs of prohibition, what to command.
669 What judgment may be rendered.
700. Costs.
701. Appeal and writ of error.

Sec. 689. Writs of mandate and prohibition may issue from the supreme and district courts of the territory, but such writs shall issue from the supreme court only when necessary for the exercise of its functions and powers. In the district court the writ may be made returnable either in the term time or vacation and may be tried before the judge of said court, in like manner and with like effect as in term time.

Sec. 690. The district court, or judge thereof, of the county wherein the defendant, if a public officer or body, exercise his or its functions, or if a private person or corporation, wherein such person resides or may be found, or such private corporation might be sued in an action, shall have exclusive jurisdiction of the proceeding, except that the supreme court shall have jurisdiction in all cases where it may be necessary or proper to enable such court to maintain appellate jurisdiction.

Sec. 691. Writs of mandate may be issued to any inferior court, corporation, board, officer or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station. But though the writ may require such court, corporation, board, officer or person, to exercise its or his judgment, or proceed to the discharge of any of its or his functions, it shall not control judicial discretion. The writ shall not be issued in any case where there is any other plain and adequate remedy.

Sec. 692. The writ shall be issued upon affidavit and motion, and shall be attested and sealed, and made returnable as the court shall direct, and the person, body, or tribunal, to whom the same shall be directed and delivered, shall make return, and for neglect to do so, shall be proceeded against as for contempt.

Sec. 693. The first writ shall be in the alternative or peremptory, as the court shall direct.

Sec. 694. Whenever a return shall be made to any such writ, issues of law and fact may be joined, and like proceedings shall be had for the trial of issues and rendering judgment as in civil actions.

Sec. 695. In case a verdict shall be found for plaintiff when the writ is in the alternate, or if judgment be given for him, he shall recover damages as in an action for a false return, against the party making the return, and a peremptory writ shall be granted without delay.

Sec. 696. The court shall have the same power to enlarge the time of making a return and pleading to such writ, and for filing any subsequent pleadings, and to continue such cause, as in civil actions.

Sec. 697. Obedience to such writ may be enforced by attachment and fine and imprisonment, or both.

Sec. 698. The writ of prohibition shall command the court or party to whom it shall be directed, to refrain from any further proceedings in the matter therein specified, until the return of the writ and the further order of the court thereon, and upon the return, to show cause why they shall not be absolutely restrained from further proceeding in the matter.

Sec. 699. The court shall render judgment either that a prohibition absolute, restraining the court and party proceeding in the matter, do issue, or authorizing the court and party to proceed in the matter in question.

Sec. 700. Costs shall be awarded in these proceedings as in civil actions.

Sec. 701. From the judgment of the district court or judge thereof, refusing or directing such writs, an appeal or writ of error may be taken to the supreme court in like manner and effect as in civil actions.

## CHAPTER LX.

### INFORMATION.

Section
702. Against whom may be filed.
703. By whom it may be filed.
704. Of what to consist.
705. When against party usurping office.
706. Notice by relator, default and subsequent proceedings.
707. Judgment where office contested.
708. Judgment for relator, his rights.
709. Court may enforce its order.
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710. Limitation of action for damages.
711. When defendant guilty, judgment; and herein of corporations.
712. Collection of costs against corporation.
713. Of property forfeited to Territory.
714. Liability for costs.
715. To annul or vacate patents, deeds, etc.
716. By whom may be filed.

Sec. 702. An information may be filed against any person or corporation in the following cases:

1. When any person shall usurp, intrude upon, or unlawfully hold or exercise any public office or franchise within the territory, or any office in any corporation created by the authority of the territory.

2. When any public officer shall have done or suffered any act, which, by the provisions of law, shall work a forfeiture of his office.

3. When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons in order to try their respective rights to the office or franchise.

4. When any association or number of persons shall act within this territory as a corporation, without being legally incorporated.

5. Or where any corporation do, or omit acts which amount to a surrender or a forfeiture of their rights and privileges as a corporation, or where they exercise powers not conferred by law.

SEC. 703. The information may be filed by the prosecuting attorney in the district court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent authority, or by any other person on his own relation, whenever he claims an interest in the office, franchise or corporation which is the subject of the information.

SEC. 704. The information shall consist of a plain statement of the facts which constitute the grounds of the proceedings, addressed to the court.

SEC. 705. Whenever an information shall be filed against a person for usurping an office, by the prosecuting attorney, he shall also set forth therein the name of the person rightfully entitled to the office, with an averment of his right thereto; and when filed by any other person he shall show his interest in the matter, and he may claim the damages he has sustained.

SEC. 706. Whenever an information is filed, a notice signed by the relator shall be served and returned, as in other actions. The defendant shall appear and answer, or suffer default, and subsequent proceeding be had as in other cases.

SEC. 707. In every case wherein the right to an office is contested, judgment shall be rendered upon the rights of the parties, and for the damages the relator may show himself entitled to, if any, at the time of the judgment.

SEC. 708. If judgment be rendered in favor of the relator, he shall proceed to exercise the functions of the office, after he has been qualified as required by law, and the court shall order the defendant to deliver over all books and papers in his custody or within his power, belonging to the office from which he has been ousted.

SEC. 709. If the defendant shall refuse or neglect to deliver over the books and papers pursuant to the order, the court or judge thereof shall enforce the order by attachment and imprisonment.

SEC. 710. When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the information, have his action for the damages at any time within one year after the judgment.

SEC. 711. Whenever any defendant shall be found guilty of any usurpation of or intrusion into, or unlawfully exercising any office or franchise within this territory, or any office in any corporation created by the authority of this territory, or when any public officer thus charged shall be found guilty of having done or suffered any act which by the provisions of the law shall work a forfeiture of his office, or when any association or number of persons shall be found guilty of having acted as a corporation without having been legally incorporated, the court shall give judgment of ouster against the defendant or defendants, and exclude him or them from the office, franchise or corporate rights, and in case of corporations that the same shall be dissolved, and the court shall adjudge costs in favor of the plaintiff.

Sec. 712. If judgment be rendered against any corporation or against any persons claiming to be a corporation, the court may cause the costs to be collected by executions against the persons claiming to be a corporation or by attachment against the directors or other officers of the corporation, and shall restrain the corporation, appoint a receiver of its property and effects, take an account and make a distribution thereof among the creditors. The prosecuting attorney shall immediately institute proceedings for that purpose.

Sec. 713. Whenever any property shall be forfeited to the territory for its use, the legal title shall be deemed to be in the territory from the time of the forfeiture, and an information may be filed by the prosecuting attorney in the district court for the recovery of the property, alleging the ground on which the recovery is claimed, and like proceedings and judgment shall be had as in civil action for the recovery of the property.

Sec. 714. When an information is filed by the prosecuting attorney, he shall not be liable for the costs, but when it is filed upon the relation of a private person such person shall be liable for costs unless the same are adjudged against the defendant.

Sec. 715. An information may be prosecuted for the purpose of annulling or vacating any letters patent, certificate or deed, granted by the proper authorities of this territory, when there is reason to believe that the same were obtained by fraud or through mistake or ignorance of a material fact, or when the patentee or those claiming under him have done or omitted an act in violation of the terms on which the letters, deeds or certificates were granted, or have by any other means forfeited the interests acquired under the same.

Sec. 716. In such cases, the information may be filed by the prosecuting attorney upon his relation, or by any private person upon his relation showing his interest in the subject matter; and the subsequent proceedings, judgment of the court and awarding of costs, shall conform to the above provisions, and such letters patent, deed or certificate shall be annulled or sustained, according to the right of the case.

## CHAPTER LXI.

### ACTIONS BY AND AGAINST EXECUTORS.

Section
717. Action by, for damages in causing death of person.
718. Survivorship of actions.
719. If several executors sued considered one person.
720. Failure to answer shall only charge with assets, when.
Section
721. When inventory may be avoided or contradicted.
722. Liability of executor of his own wrong.
723. Authority of an executor.
724. Arrest and attachment of executors, etc. not allowed for acts of testator and intestate.

Sec. 717. When the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action at law therefor against the latter, if the former might have maintained an action, had he lived, against the latter, for an injury caused by the same act or omission. Such action shall be commenced within two years after the death, and the damages therein shall not exceed five thousand dollars, and the amount recovered, if any, shall be administered as other personal property of the deceased person.

SEC. 718. All other causes of action by one person against another, whether arising on contract or otherwise, survive to the personal representatives of the former and against the personal representatives of the latter. Where the cause of action survives as herein provided, the executors or administrators may maintain an action at law thereon against the party against whom the cause of action accrued, or after his death against his personal representatives.

SEC. 719. In an action against several executors or administrators, they shall all be considered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action, although the notice be served only on part of them in the same manner and with like effect as if served on all, except as provided in the next section.

SEC. 720. When a judgment is given against an executor or administrator for want of answer, such judgment is not to be deemed evidence of assets in his hands, unless it appear that the complaint alleged assets and that the notice was served upon him.

SEC. 721. In an action against executors and administrators, in which the fact of their having administered the estate of their testator or intestate, or any part thereof, is put in issue and the inventory of the property of the deceased returned by them is given in evidence, the same may be contradicted or avoided by evidence:

1. That any property has been omitted in such inventory or was not returned therein at its full value, or that since the return thereof such property has increased in value.

2. That such property has perished or been lost without the fault of such executors or admistrators, or that it has been fairly and duly sold by them at a less price than the value so returned, or that since the return of the inventory such property has deteriorated in value. In such action the defendants cannot be charged for any things in action specified in their inventory, unless it appear that they have been collected or with due diligence might have been.

SEC. 722. No person is liable to an action as executor of his own wrong for having taken, received or interfered with the property of a deceased person, but is responsible to the executors or administrators of such deceased person for the value of all property so taken or received, and for all injury caused by his interference with the estate of the deceased.

SEC. 723. An executor of an executor has no authority as such to commence or maintain an action or proceeding relating to the estate of the testator of the first executor, or to take any charge or control thereof.

SEC. 724. In an action against an executor or administrator as such, the remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate, but for his own acts as such executor or administrator, such remedies shall be allowed for the same causes in the manner and with like effect as in actions at law generally.

## CHAPTER LXII.

### CONTEMPTS AND THEIR PUNISHMENT.

SECTION
725. What acts or omissions are deemed.
726. Powers of court to punish.
727. In presence of court, how punished.
728. In other cases, procedure.
729. If in custody may be produced to answer.
730. Territory plaintiff, who prosecutes action.
731. Warrant for arrest, bail, etc.
732. Return of sheriff and proceedings.
SECTION
733. Hearing and sentence.
734. Indemnity to party injured may be given in judgment.
735. Party may be imprisoned until he performs.
736. Liable also to indictment if act be indictable.
737. Alias warrant if party fails to appear.
738. Right of appeal prescribed.

SEC. 725. The following acts or omissions, in respect to a court of justice or proceedings therein, are deemed to be contempts of court:

1. Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings.

2. A breach of the peace, boisterous conduct or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding.

3. Misbehavior in office or other willful neglect or violation of duty by an attorney, clerk, sheriff or other person appointed or selected to perform a judicial or ministerial service.

4. Deceit, abuse of the process or proceedings of the court by a party to an action, suit or special proceeding.

5. Disobedience of any lawful judgment, decree, order or process of the court.

6. Assuming to be an attorney or other officer of the court, and acting as such without authority in a particular instance.

7. Rescuing any person or property in the lawful custody of an officer, held by such officer under an order or process of such court.

8. Unlawfully detaining a witness or party to an action, suit or proceeding, while going to, remaining at or returning from the court where the same is for trial.

9. Any other unlawful interference with the process or proceedings of a court.

10. Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness.

11. When summoned as a juror in a court, improperly conversing with a party to an action, suit or proceeding to be tried at such court, or with any other person in relation to the merits of such action, suit or proceeding, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

12. Disobedience by an inferior tribunal, magistrate or officer, of the lawful judgment, decree, order or process of a superior court, or proceeding in an action, suit or proceeding, contrary to law, after such action, suit or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate or officer.

SEC. 726. Every court of justice, and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars, nor the imprisonment six months; and when the contempt is not of those mentioned in sub-divisions one and two of the last section, it must appear that the right or remedy of a party to an action, suit or proceeding was defeated or prejudiced thereby, before the contempt can be punished otherwise than by a fine not exceeding one hundred dollars.

SEC. 727. When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed.

SEC. 728. In cases other than those mentioned in the preceding section, before any proceedings can be taken therein, the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance.

SEC. 729. If the party charged be in custody of an officer by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody that he may answer, and he shall thereupon be produced and held until an order be made for his disposal.

SEC 730. In the proceeding for a contempt, the territory is the plaintiff In all cases of public interest, the proceeding may be prosecuted by the district attorney on behalf of the territory, and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a co-plaintiff with the territory.

SEC. 731. Whenever a warrant of arrest is issued pursuant to this chapter, the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the warrant, or detained in custody without bail, and if he may be bailed, the amount in which he may be let to bail. Upon executing the warrant of arrest, the sheriff must keep the person in actual custody, bring him before the court or judicial officer and detain him until an order be made in the premises, unless the person arrested execute and deliver to the sheriff, at any time before the return day of the warrant, a bond with two sufficient sureties, to the effect that he will appear on such return day and abide the order or judgment of the court or officer thereupon.

SEC. 732. The sheriff shall return the warrant of arrest and the bond, if any, given him by the defendant, by the return day therein specified. When the defendant has been brought up or appeared, the court or judicial officer shall proceed to investigate the charge by examining such defendant and witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

SEC. 733. Upon the evidence so taken, the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged; and, if it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter.

SEC. 734. If any loss or injury to a party in an action, suit or proceeding prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover of the defendant a sum of money sufficient to indemnify him, and to satisfy his costs and disbursements, which judgment, and the acceptance of the amount thereof, is a bar to any action, suit or proceeding by the aggrieved party for such loss or injury.

Sec. 735. When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it, and in such case the act must be specified in the warrant of commitment.

Sec. 736. Persons proceeded against according to the provisions of this chapter, are also liable to indictment for the same misconduct, if it be an indictable offense, but the court before which a conviction is had on the indictment, in passing sentence shall take into consideration the punishment before inflicted.

Sec. 737. When the warrant of arrest has been returned served, if the defendant do not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the bond to be prosecuted, or both. If the bond be prosecuted and the aggrieved party join in the action, and the sum specified therein be recovered, so much thereof as will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued, shall be deemed to be recovered for such party exclusively.

Sec. 738. Either party to a judgment in a proceeding for a contempt, may appeal therefrom in like manner and with like effect as from judgment in an action, but such appeal shall not have the effect to stav the proceedings in any other action, suit or proceeding, or upon any judgment, decree or order therein, concerning which, or wherein such contempt was committed. Contempts of justices' courts are punishable in the manner specially provided for in the "act relating to justices of the peace and to their practice and jurisdiction"

## CHAPTER LXIII.

### SUITS ON FOREIGN JUDGMENTS.

Section
739. Of judgments in other state or territory, except where personal service.

Section
740. In such cases, same defence may be made as in original proceedings.

Sec. 739. Judgment for debt rendered in any state or other territory, against any person or persons residents of this territory at the time of the rendition of such judgment, shall not be of any higher character as evidence of indebtedness than the original claim or demand upon which such judgment is rendered, unless such judgment shall be rendered upon personal service of summons, notice or other due process against the defendant therein.

Sec. 740. The same defense to suits on judgments rendered without such personal service may be made by the judgment debtor, which might have been set up in the original proceeding.

# CHAPTER LXIV.

## MISCELLANEOUS PROVISIONS.

SECTION
741. Pleadings sworn to, how regarded.
742. New party to action, notice.
743. Time how computed.
744. Process to be directed to sheriff.
745. Where there is no sheriff, or he is disqualified, etc.
746. Notice to be in writing, service and return.
747. Certain charges actionable as slanderous words.

SECTION
748. Person authorized to take bail may administer oath.
749. Bonds valid, how defective.
750. Deposit in lieu of bail.
751. Lien against defendant, tenant in common, etc.
752. Execution against interest in copartnership property.
753. Judgment of justice of peace, a judgment of district court.

SEC. 741. Pleadings sworn to by either party in any case shall not, on the trial, be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party.

SEC. 742. When a new party is introduced into an action, as a representative or successor of a former party, such new party is entitled to the same notice, to be given in the same manner, as required for defendants in the commencement of an action,

SEC. 743. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last. If the last day be Sunday it shall be excluded.

SEC. 744. All process issuing out of the district court shall be directed to the sheriff of the county in which it is to be served, and be by him executed according to law.

SEC. 745. When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty, to appoint some suitable person, a citizen of the county, to execute the same: *Provided*, That final process shall in no case be executed by any other person than the legally authorized officer; or in case he is disqualified, some suitable person appointed by the court, or judge thereof, out of which the process issues, who shall make such appointment in writing; and before such appointment shall take effect, the person so appointed shall give security to the party interested for the faithful performance of his duties, which bond of suretyship shall be in writing, be approved by the court or judge appointing him, and be placed on file with the papers in the case.

SEC. 746. In all cases where notice is required by this code it shall be in writing, and must be duly served upon the party. If served by an officer whose duty it is to serve process, his return shall be sufficient. It may be served, however, when not otherwise especially provided herein, by any disinterested person; in which event, proof of service must be established by the affidavit of the person making such service: *Provided*, The written admission of service of the party, his agent or attorney, shall be equivalent to personal service.

SEC. 747. Every charge of incest, fornication, adultery, or whoredom, falsely made by any person against a female; also words falsely spoken of any person charging such person with incest or the infamous crime against nature, either with mankind or the brute creation, shall be accountable in the same manner as in the case of slanderous words charging a crime, the commission of which would subject the offender to death or other degrading penalties.

Sec. 748. Every court and officer authorized to take any bail or surety, shall have power to examine on oath the person offering to become such bail or surety, concerning his property, and sufficiency as such bail or surety.

Sec. 749. No bond required by law, and intended as such bond, shall be void for want of form or substance, recital, or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect, in the same manner as though it were a perfect bond.

Sec. 750. Any person required to give bail, may deposit with the clerk the amount of money for which he is required to give bail, and thereupon be discharged from arrest.

Sec. 751. When a defendant in execution owns real estate subject to execution, jointly or in common with any other person, the judgment shall be a lien, and the execution be levied upon the interest of the defendant only.

Sec. 752. When he owns personal property jointly, or in co-partnership with any other person, and the interest cannot be separately attached, the sheriff shall take possession of the property, unless the other person having an interest therein shall give the sheriff a sufficient bond, with surety, to hold and manage the property according to law; and the sheriff shall then proceed to sell the interest of the defendant in such property, describing such interest in his advertisement as nearly as may be, and the purchaser shall acquire all the interest of such defendant therein; but nothing herein contained shall be so construed as to deprive the co-partner of any such defendant of his interest in any such property.

Sec. 753. Any party having a judgment upon any justice's docket, upon which an execution has been returned unsatisfied, and no property found, may take a transcript of such judgment and return it to the clerk of the district court embracing his county, and upon making affidavit that the defendant has real estate in any county of said district subject to execution, the clerk shall enter the judgment in the execution docket, in the same manner as judgments of the district court, and thereafter it shall stand and execution be issued thereon as upon the judgment of the district court. A transcript thereof shall, as in other judgments, be recorded by the county auditor and remain a lien upon real estate in the county where so recorded.

## CHAPTER LXV.

### OF CONSTRUCTION.

Section
754. "District" and "county" convertible terms.
755. Of the term "officer."
756. Of words importing number and gender.
757. Actions commenced to conform to this code.
758. This code to be liberally construed.
759. The word "month" a calendar month.

Section
760. Accrued rights not affected by provisions of this code; effect of.
761. When same as existing statutes not new enactments.
772. What laws are repealed.
763. Effect of this code.

Sec. 754. For all necessary purposes connected with the district court each district shall be considered and held to be but one county; and whenever in this code the words district or county occur, the same may be rendered county or district, as may be necessary: *Provided*, That nothing herein contained shall be construed to confer jurisdiction upon county officers or extend their powers beyond the limits of their counties.

SEC. 755. Whenever any term indicating an officer is used it shall be construed, when required, to mean any person authorized by law to discharge the duties of such officer.

SEC. 756. Words importing the singular number only may also be applied to the plural of persons and things, and words importing the masculine gender only, may be extended to females also.

SEC. 757. In actions already commenced, the pleadings to be had to form issues, the manner of procuring testimony, [the examination of parties] the trial and rendition of judgment and all proceedings, shall conform to the provisions of this code as far as practicable.

SEC. 758. The provisions of this code shall be liberally construed, and shall not be limited by any rule of strict construction.

SEC. 759. That the word "month" or "months" whenever the same occurs in the statutes of this territory now in force, or in statutes hereafter enacted or in any contract made in this territory shall be taken and construed to mean calendar.

SEC. 760. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions; but the proceedings therein must conform to the requirements of this code as far as applicable.

SEC. 761. The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

SEC. 762. No statute law, or rule is continued in force because it is consistent with the provisions of this code on the same subject; but in all cases provided for by this code, all statutes, laws and rules heretofore in force in this territory, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are repealed and abrogated.

SEC. 763. This repeal, or abrogation, does not revive any former law heretofore repealed, nor does it affect any rights already existing or accrued, or any action or proceeding already taken, except as in this code provided; nor does it affect any private statute not expressly repealed.

NOTE BY THE SECRETARY:—The following sections appear in the enrolled copy on file in the Secretary's office. (See note at close of volume.)

N. H. OWINGS,
*Secretary of Washington Territory.*

[Subdivisions of Section 325.]

1. The judgment creditor, his assignee or the party to whom such judgment is due and payable, shall file a motion with the clerk of the court where judgment is entered, for leave to issue an execution. The motion shall state the names of the parties to the judgment, the date of its entry and the amount claimed to be due thereon, or the particular property of which the possession was thereby adjudged to such party, remaining undelivered. The motion shall be subscribed and verified in like manner as a complaint in an action at law.

2. At any time after filing such motion, the party may cause notice to be served on the judgment debtor, in like manner and with like effect, as in an action at law. In case such judgment debtor be dead, the notice may be served upon his representatives by publication, as in case of a non-resident, or by personal service.

3. The notice shall be substantially the same as in an action at law, and it shall also state the amount claimed or the property sought to be recovered.

4. The judgment debtor, or in case of his death, his representatives, may file an answer to such motion within the time allowed by law to answer a complaint, alleging any defense to such motion which may exist. If no answer be filed within the time prescribed, the motion shall be allowed of course. The moving party may demur or reply to the answer. The party opposed to the motion may demur to the same, or to the reply. The pleadings shall be subscribed and verified and the proceedings conducted as in civil actions.

5. The word representatives in this section shall be deemed to include any or all of the persons in whose possession property of the judgment debtors may be, which is liable to be taken and sold or delivered in satisfaction of the execution.

6. The order shall specify the amount for which execution is to issue, or the particular property, possession of which is to be delivered; it shall be entered in the journal and docketed as a judgment, and a final record shall be made of the proceedings in the same manner as a judgment.

Sec. 326. Such leave shall not be given unless it be established by oath of the party, or other satisfactory proof, that the judgment, or some part thereof remains unsatisfied. The order of court granting such leave shall operate as a revival of the judgment, for the amount found due at the time of such revival, and the same shall be and continue a lien upon real estate of the judgment debtor, for the period of five years from and after the date of such order, in like manner with the original judgment: *Provided*, That a transcript thereof shall, within twenty days, be filed in the office of the county auditor of the county where the lands of such judgment debtor lie or said lien shall be suspended till such transcript be filed. Revived judgments shall be in all respects similar to original judgments, as to lien and enforcement or collection.

Sec. 584. The proportion of the proceeds of the sale to be invested as provided in the preceding section shall be ascertained and determined in the several cases as follows.

[The following is omitted from Sec. 585, after the word "appears," in line one, viz: "that a married woman has an inchoate right of dower in any of the property sold, or" Also, in same section, after the word such, in line three, "inchoate" is omitted.]

Sec. 751. The widow, or widow and children, or child or children if no widow, of a man killed in a duel, shall have a right of action against the person killing him and against the seconds, and all aiders or abettors, and shall recover such sum as to the jury shall seem reasonable.

# CRIMINAL PROCEDURE.

## CHAPTER LXVI.

### THE RIGHTS OF PARTIES ACCUSED.

Section
764. No person shall be held to answer except upon indictment.
765. Right to be heard by himself, or counsel, and to meet witnesses face to face, except when depositions are taken.
766. Shall have process to compel attendance of witnesses.
767. No conviction, except upon confession or verdict.
768. Judgment bar to another prosecution.

Section
769. Party acquitted because of variance, may be re-indicted.
770. No punishment except upon conviction.
771. When entitled to trial.
776. Nolle prosequi, and dismissal of actions.
778. May be discharged upon bail, except in case of murder.
779. Time within which may be prosecuted.
780. Where to be prosecuted.

Sec. 764. That no person shall be held to answer in any court for an alleged crime or offense, unless upon an indictment by a grand jury, except in cases of misdemeanor before a justice of the peace, or before a court martial.

Sec. 765. On the trial of any indictment the party accused shall have the right to be heard by himself or counsel, to meet the witnesses produced against him face to face; *Provided, always*, That in any case where a witness or witnesses, whose deposition or depositions have been taken by a committing magistrate, pursuant to law, are absent and cannot be found when required to testify in such case, so much of such deposition or depositions, as the court shall decide to be admissible and competent, shall be admitted and read as evidence in such case.

SEC. 766. On the trial of any indictment the party accused shall have the right to produce witnesses and proofs in his favor, and have compulsory process to compel the attendance of witnesses in his behalf, and to a speedy public trial by an impartial jury, and no person shall be put upon trial on an indictment for a felony until the expiration of five days from the day of his arrest.

SEC. 767. No person indicted for an offense shall be convicted thereof unless by confession of his guilt in open court, or by the verdict of a jury accepted and recorded in open court.

SEC. 768. A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in the indictment on which the conviction or acquittal took place.

SEC. 769. If any person indicted for an offense shall on his trial, be acquitted upon the ground of a variance between the indictment and the proof, or upon any exception to the form, or to the substance of the indictment, he may be arraigned on a new indictment, and may be tried and convicted for the same offense, notwithstanding such former acquittal, except where such former charge was a capital offense.

SEC. 770. No person charged with any offense against the law shall be punished for such offense, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case and of the person.

SEC. 771. When a person has been held to answer, if an indictment be not found against him at the next regular term of the court at which he is held to answer, the court must order the prosecution to be dismissed unless good cause to the contrary be shown.

SEC. 772. If a defendant indicted for an offense, whose trial has not been postponed upon his application, be not brought to trial at the next regular term of the court in which the indictment is triable after the same is found, the court must order it to be dismissed unless good cause to the contrary be shown.

SEC. 773. If the defendant be not indicted or tried as provided in the last two sections, and sufficient reason therefor shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody on his recognizance or on bail for his appearance to answer the charge at the time to which the action is continued, but no such continuance can be extended beyond two terms of court.

SEC. 774. If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail must be exonerated, and if money has been deposited instead of bail it must be refunded to him.

SEC. 775. The court may, either upon its own motion, or upon application of the prosecuting attorney, and in furtherance of justice, order an action after an indictment to be dismissed, but in such case the reason of the dismissal must be set forth in the order, which must be entered upon the record.

Sec. 776. The entry of a *nolle prosequi* is abolished, and no prosecuting attorney shall hereafter discontinue or abandon a prosecution except as provided in the last section.

Sec. 777. An order for dismissal as provided in this chapter, is a bar to another prosecution for the same offense, if it be a misdemeanor; but it is not a bar if the offense charged be a felony.

Sec. 778. Every person charged with an offense except that of murder in the first degree, where the proof is evident or the presumption great, may be bailed by sufficient sureties, and bail shall justify and have the same rights as in civil cases, except as otherwise provided in this chapter: *Provided*, That all persons accused of crime in any court of this Territory, whether by indictment or otherwise, shall be admitted to bail by the court, where the same is pending, or by a judge in vacation, when it shall appear to the court or judge that the accused has offered to go to trial in good faith and without collusion with witnesses, and has been denied a trial by the court, or that the accused is so sick or infirm that further confinement in jail would greatly endanger his life or make his sickness or infirmity permanent, and the bail bond in such cases shall be reasonable and at the sound discretion of the court.

Sec. 779. Prosecutions for the offenses of murder and arson, where death ensues, may be commenced at any period after the commission of the offense; for offenses, the punishment of which may be imprisonment in the penitentiary, within three years after their commission, and for all other offenses within one year after their commission: *Provided*, That any length of time during which the party charged was not usually and publicly resident within the territory, shall not be reckoned within the one and three years respectively: *And further provided*, That where a person has been indicted within the period during which the indictment might be found, if the indictment be quashed, the time of limitation shall be computed from the quashing of such indictment.

Sec. 780. Crimes and misdemeanors, under the laws of the territory, shall be prosecuted and punished in the courts having jurisdiction, in the county where the offense was committed, unless a change of venue is ordered.

## CHAPTER LXVII.

### PUBLIC OFFENSES.

Section
781. Felony and misdemeanor defined.
781. Felony; how punishable.
782. Common law offenses, triable.
783. Neglect to perform official duty.
Section
784. Act prohibited, no penalty fixed, a misdemeanor.
785. Punishment for such misdemeanor.

Sec. 781. Public offenses are divided into: 1, felonies; and 2, misdemeanors. A felony is punishable by death or imprisonment in the penitentiary. All other offenses are misdemeanors.

Sec. 782. All offenses at common law, which are not hereinafter defined by statute are indictable and triable in the district courts of this territory.

Sec. 783. When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision has been made for the punishment of such delinquency, is a misdemeanor.

Sec. 784. When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor.

Sec. 785. Every person who is convicted of a misdemeanor, the punishment of which is not otherwise prescribed by any statute of this territory, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

# CHAPTER LXVIII.

## OEFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

SECTION
786. Murder in first degree defined.
787. Obstructions on railroad, with intent to destroy life, murder.
788. Obstructions on railroad whereby life is endangered, punishment for.
789. Punishment for offenses under preceding sections.
790. Murder in second degree defined.
791. Killing in duel, murder in second degree.
792. Inflicting mortal wound in duel, where death ensues, murder in second degree.
793. Manslaughter defined.
794. Assisting another to commit suicide, manslaughter.
795 Overloading vessel whereby any person is drowned, manslaughter.
796. Officers of steamers carrying passengers, guilty of manslaughter in certain cases.
797. Present at duel where death ensues, manslaughter.
798. Punishment for manslaughter.
799 Punishment for duelling and sending challenges.
800. Accepting challenge, or aiding or advising or encouraging duels.
801. Administering poison with intent to kill.
802. Mingling poison with food or drink.
SECTION
803. Malicious mayhem defined.
804. Simple mayhem defined.
805. Assault defined.
806. Assault with intent to murder, etc.
807. Assault with deadly weapon when no considerable provocation appears.
808. Assault and battery defined.
809. Assaulting with cow-hide or whip.
810. Exhibiting pistol in crowd in rude manner.
811. Attempt to commit murder by drowning.
812. Ravishing female of the age of twelve years or more.
813. Forcing woman to marry, or to be defiled.
814. Carnal knowledge of female by administering drugs.
815. Enticing female to house of prostitution.
816. Seducing or debauching female of chaste character.
817. Kidnapping defined.
818. Kidnapping child; punishment.
819. Violation preceding sections, where punishable.
820. Abortion defined.
821. Administering poison, with intent to produce miscarriage.
822. Extortion defined, and punishment for.

Sec. 786. Every person who shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate any rape, arson, robbery or burglary, or by administering poison, or causing the same to be done, kill another, every such person shall be deemed guilty of murder in the first degree, and upon conviction thereof shall suffer death. But this shall in no case prevent the exercise of the pardoning power of the governor, or the authority to commute the punishment from that of death to imprisonment for life.

Sec. 787. Any person, or persons, who shall willfully and maliciously displace any switch or rail, disturb, injure, or destroy any part of a track or bridge of any railroad, or place any obstruction thereon, with intent that any person or property passing over said railroad should thereby be injured, and human life shall thereby be destroyed, such person or persons so offending shall be deemed guilty of murder in the first degree, and upon conviction thereof shall suffer death. But this shall in no case prevent the exercise of the pardoning power of the governor, or authority to commute.

Sec. 788. If any person or persons shall willfully and maliciously place any obstruction on the track of any railroad in this territory, or remove any rail therefrom, or in any other way injure such railroad, or do any other thing thereto, whereby the life of any person is or may be endangered, he or they shall be punished by confinement in the territorial penitentiary for life, or for any term not less than two years.

Sec. 789. Any person or persons guilty of either the offenses enumerated in section 787, and thereby endangering and not destroying human life or thereby causing injury or destruction of property, upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term of not less than one, nor more than ten years and shall be kept at hard labor.

Sec. 790. Every person who shall purposely and maliciously, but without deliberation and premeditation, kill another, every such person shall be deemed guilty of murder in the second degree, and upon conviction thereof shall be imprisoned in the penitentiany for a term of not less than ten, nor more than twenty years, and kept at hard labor.

Sec. 791. If either party to a duel be killed, the survivor shall be deemed guilty of murder in the second degree.

Sec. 792. If any person shall, by previous appointment made within, fight a duel without this territory, and in so doing shall inflict a mortal wound upon any person, whereof the person so injured shall die, such person so offending shall be deemed guilty of murder in the second degree, within any county in this territory.

Sec. 793. Every person who shall unlawfully kill any human being without malice express or implied, either voluntarily upon a sudden heat, or involuntarily, but in the commission of some unlawful act, such person shall be deemed guilty of manslaughter.

Sec. 794. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter.

Sec. 795. Any person navigating any boat or vessel for gain, who shall willfully or negligently receive so many passengers, or such a quantity of other lading, that by means thereof such boat or vessel shall sink or overset, and thereby any human being shall be drowned or otherwise killed, shall be deemed guilty of manslaughter.

Sec. 796. If the captain, or any other person having charge of any steamboat used for the conveyance of passengers, or if the engineer or other person having charge of the boiler of such boat or of any other apparatus for the generation of steam, shall, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, create or allow to be created, such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking any person shall be killed, every such captain, engineer or other person, shall be deemed guilty of manslaughter.

Sec. 797. Any person who shall be present at a duel as second, when either party thereto shall be killed, or a mortal wound inflicted, and whereof death shall ensue, shall be deemed guilty of manslaughter.

Sec. 798. Any person convicted of manslaughter shall be punished by imprisonment in the penitentiary, not less than one year nor more than twenty years, and shall be fined in any sum not exceeding five thousand dollars.

Sec. 799. Every person who shall engage in a dual with any deadly weapon, although no homicide ensue, or shall challenge another to fight a duel, or shall send or deliver any written or verbal message, purporting or intending to be such challenge, although no duel ensue, shall be imprisoned, on conviction thereof, in the penitentiary, not more than ten years, nor less than one year.

Sec. 800. Every person who shall accept such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel ensue or not, and every person who shall be present at the fighting of a duel with deadly weapons, as an aid or second, or who shall advise, encourage, or promote such duel, shall, on conviction thereof, be imprisoned in the penitentiary not more than five years nor less than six months.

Sec. 801. Every person who shall administer, or procure to be administered, any poison to any other human being, with intent to kill the person to whom the same shall be administered, if death do not ensue, upon conviction thereof, shall be imprisoned in the penitentiary not more than twenty years nor less than two years.

Sec. 802. Every person who shall mingle poison with any food, drink or medicine, with intent to injure any human being, or who shall poison any spring, well or reservoir of water, with such intent, shall, upon conviction thereof, be imprisoned in the penitentiary not more than fourteen years nor less than one year.

Sec. 803. Every person who on purpose, and of malice aforethought, shall unlawfully disable the tongue, put out an eye, cut or bite off the nose, ear, lip, or other member of any person, with intent to disfigure or disable such person, shall be deemed guilty of malicious mayhem, and upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years nor less than one year, and be fined in any sum not exceeding one thousand dollars.

Sec. 804. Every person who shall violently and unlawfully, but without premeditation, deprive another of the use of any bodily member, or who shall unlawfully and willfully, but without premeditation, disable the tongue or eye, or bite the nose, ear or lip of another, shall be deemed guilty of simple mayhem, and on conviction thereof, shall be imprisoned in the county jail not more than one year nor less than one month, and be fined in any sum not exceeding two thousand dollars, or fined only.

Sec. 805. An assault is an attempt in a rude, insolent and angry manner, unlawfully to touch, strike, beat or wound another person, coupled with a present ability to carry such attempt into execution, and every person convicted thereof, shall be fined in any sum not exceeding five hundred dollars, to which may be added imprisonment in the county jail not exceeding six months.

Sec. 806. An assault with an intent to commit murder, rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the penitentiary for a term of not less than one year, nor more than fourteen years.

Sec. 807. An assault with a deadly weapon, instrument or other thing with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show a willful, malignant and abandoned heart, shall subject the offender to imprisonment in the penitentiary not exceeding two years, or to a fine not exceeding five thousand dollars, or to both such fine and imprisonment.

Sec. 808. Assault and battery is the unlawful beating of another, and a person duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail, not exceeding one year.

Sec. 809. Every person who shall assault and beat another with a cowhide or whip, having with him at the time a pistol or other deadly weapon, shall, on conviction thereof, be imprisoned in the county jail not more than one year nor less that three months, and be fined in any sum not exceeding one thousand dollars.

Sec. 810. Every person who shall, in a rude, angry or threatening manner, in a crowd of two or more persons, exhibit any pistol, bowie knife, or other dangerous weapon, shall on conviction thereof, be imprisoned in the county jail not exceeding one year and be fined in any sum not exceeding five hundred dollars.

Sec. 811. Every person who shall attempt to commit the crime of murder by drowning or strangling another person, or by any means not constituting an assault with intent to commit murder, shall on conviction thereof, be imprisoned in the penitentiary not more than ten years nor less than one year.

Sec. 812. If any person ravish and carnally know any female of the age of twelve years or more, by force and against her will, or carnally know and abuse any female child under the age of twelve years, he shall be punished by imprisonment in the penitentiary for life or any term of years.

Sec. 813. If any person take any woman unlawfully and against her will, and by force, menace or duress, compel her to marry him or any other person, or to be defiled, he shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding ten years.

Sec. 814. If any person unlawfully have carnal knowledge of any female by administering to her any substance, or by any other means producing such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, or have such carnal knowledge of an idiot or female naturally of such imbecility of mind or weakness of body as to prevent effectual resistance, he shall, upon conviction, be punished as provided in section eight hundred and twelve.

Sec. 815. If any person take or entice away any unmarried female under the age of fifteen years from her father, mother, guardian or other person having the legal charge of her person without their consent, for the purpose of prostitution, he shall, upon conviction, be punished with imprisonment in the penitentiary for not more that three years, or by a fine of not more than one thousand dollars and imprisonment in the county jail not more than one year.

Sec. 816. If any person seduce and debauch any unmarried woman of previously chaste character, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year. If before judgment upon an indictment, the defendant marry the woman thus seduced, it is a bar to any further prosecution for the offense.

Sec. 817. Every person who shall steal and take, or forcibly and unlawfully arrest any person and convey such person to parts without the territory of Washington or aid or abet therein, or who shall forcibly and unlawfully take or assist, or aid or abet, in forcibly and unlawfully taking or arresting any person, with intent to take such person to parts without said territory, without having first established a claim upon the services of such person, according to the laws of this territory or of the United States, shall be deemed guilty of kidnapping, and upon conviction thereof shall be imprisoned in the penitentiary not more than fourteen nor less than one year, and be fined not more than five thousand dollars nor less than one hundred dollars.

Sec. 818. If any person maliciously, forcibly or fraudulently lead, take, decoy or entice away any child under the age of twelve years, with the intent to detain or conceal such child from its parent, guardian or other person having the lawful charge of such child, he shall be punished by imprisonment in the penitentiary not more than ten years, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Sec. 819. Every offense mentioned in sections 817 and 819, may be tried either in the county in which the same may have been committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services shall be sold or transferred shall have been taken, confined, held, carried or brought; and upon the trial of any such offense, the consent thereto of the person so taken, enveigled, kidnapped or confined, shall not be a defense, unless it shall be made satisfactorily to appear to the jury that such consent was not obtained by fraud, nor extorted by duress or by threats.

Sec. 820. Every person who shall administer to any woman pregnant with a quick child, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child or of such mother be thereby produced, on conviction thereof, be imprisoned in the penitentiary not more than twenty years nor less than one year.

Sec. 821. Every person who shall administer to any pregnant woman whom he supposes to be pregnant, any medicine, drug or substance whatever, or shall use or employ any instrument, or other means, thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall on conviction thereof be imprisoned in the penitentiary not more than five years nor less than one year, or be imprisoned in the county jail not more than twelve months nor less than one month, and be fined in any sum not exceeding one thousand dollars.

Sec. 822. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever, or to control the person so threatened to do any act against his will, he shall, upon conviction thereof, be imprisoned in the county jail not more than one year nor less than one month, or be fined in any sum not exceeding five hundred dollars, nor less than one hundred dollars.

# CHAPTER LXIX.

## OFFENSES AGAINST PROPERTY.

SECTION
823. Arson defined, and punishment.
824. Setting fire to lumber, wood, grain, etc.
825. Setting fire to building of his own.
826. Preceding sections apply to married women.
827. Burglary defined.
828. Person breaking into dwelling, held to enter with intent to commit felony.
829. Robbery defined.
830. Grand larceny defined.
831. Petit larceny defined.
832. Bond, notes, drafts, etc., subject of larceny.
833. Stealing horse, mare, sheep, mule or neat cattle.
834. Obtaining money by false personation.
835. Embezzlement by officer, agent, clerk, servant or other person.
836. Embezzlement by warehouseman, miller, commission merchant.
837. Dogs, subject to larceny.
838. Maiming or poisoning domestic animals.
839. Marking cattle, with intent to steal.
840. Unlawful to cut off more than one-half the ears domestic animals.
841. Injuring telegraph posts, rail or plank roads.
842. Injuring bridges, mill dam, canal flume, etc.

SECTION
843. Cutting away, letting loose or destroying raft of logs.
844. Cutting down or destroying fruit or ornamental trees.
845. Defacing, cutting or carving any guide board, etc.
846. Obstructing ditches or drains.
847. Setting timber lands on fire.
848. Breaking down sign boards, fence, gate or mile post.
849. Buying, receiving, or aiding in concealing stolen goods.
850. In prosecutions under preceding section, need not prove; what.
851. Property obtained by larceny to be restored.
852. Upon conviction for burglary, etc., certain recompense made.
853. Obtaining money under false pretences.
854. Forgery defined.
855. Counterfeiting implement, with intent to use.
856. What must be alleged in indictment for forgery.
857. Counterfeiting defined.
858. Forcible entry or forcible detainer.

SEC. 823. Every person who shall willfully and maliciously set fire to the dwelling house, barn, stable, out-house, ship, steamboat, or other vessel, or any water craft, mill, milk-house, banking house, distillery, manufactory, mechanic's or artificers' shop, store house, building, or room occupied as a shop or an office for professional business, or printing office of another, any public bridge, court house, jail, market house, seminary or college edifice, or building thereto belonging, or other public buildings of the value of five dollars, shall be deemed guilty of arson, and upon conviction thereof, shall be imprisoned in the penitentiary not more than ten years, nor less than one year, or in the county jail not more than six months, nor less than one month, and be fined in any sum not exceeding one thousand dollars; and should the death of any person ensue therefrom, known to be occupying or present on said premises, at the time such premises are willfully set fire to, the offender, on conviction thereof, shall be deemed guilty of murder in the first degree.

SEC. 824. Every person who shall willfully and maliciously set fire to any pile or parcel of boards, timber, piles, or other lumber, cord wood, ricks, stacks, or shocks of grain, hay or other vegetable products, or vegetable products severed from the soil not in ricks, stacks or shocks, or any standing grass or grain, or other cultivated vegetable product of the soil, shall, upon conviction thereof, be imprisoned in the county jail not more than one year nor less than one month, and be fined in any sum not exceeding five hundred dollars.

SEC. 825. Every person who shall willfully and maliciously set fire to the dwelling house, or any building owned by himself, whereby the dwelling house or building of another shall be burnt or injured by fire, shall, on conviction thereof, be imprisoned in the penitentiary not more than ten years nor less than one year, or be imprisoned in the county jail not more than six years nor less than six months, and fined in any sum not exceeding one thousand dollars; and should the life of any person be thereby lost, such offender shall be deemed guilty of murder in the second degree, and be imprisoned in the penitentiary during life.

Sec. 826. The three preceding sections shall severally extend to a married woman who may commit either of the offenses therein described, though the property set fire to may belong partly or wholly to her husband.

Sec. 827. Every person who shall unlawfully enter in the night time or shall unlawfully break or enter in the day time, any dwelling house or out house thereunto adjoining, and occupied therewith, or any office, shop, store, or warehouse, or any ship, steamboat or vessel, within the body of any county, with intent to commit a misdemeanor or a felony, shall be deemed guilty of burglary and upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years nor less than one year.

Sec. 828. Every person who shall be guilty of any such unlawful entry or unlawful breaking and entry as described in the next preceding section shall be deemed to have made such entry or breaking or entry with intent to commit a misdemeanor or a felony, unless such entry or breaking and entry shall be explained by testimony satisfactory to the jury trying the case to have been made for some purpose without criminal intent.

Sec. 829. Every person who shall forcibly and feloniously take from the person of another, or from his immediate presence, any article of value by violence or putting in fear, shall be deemed guilty of robbery, and upon conviction thereof shall be punished with imprisonment in the penitentiary for any length of time not more than twenty years nor less than one year.

Sec. 830. Every person who shall feloniously steal, take and carry, lead or drive away the personal goods or property of another, of the value of thirty dollars or more, shall be deemed guilty of grand larceny, and upon conviction thereof shall be imprisoned in the penitentiary not more than fourteen years nor less than one year.

Sec. 831. Every person who shall feloniously steal, take and carry, lead or drive away the personal goods or property of another, under the value of thirty dollars, shall be deemed guilty of petit larceny, and upon conviction thereof shall be fined not less than twenty-five nor more than one hundred dollars, or be imprisoned in the county jail not more than one month or by both fine and imprisonment in the discretion of the court.

Sec. 832. Bonds, promissory notes, bills of exchange, or other bills, orders, drafts, checks or certificates, or warrants for or concerning money, goods or property due, or to become due, or to be delivered, and any deed or writing containing a conveyance of land, or any valuable contract in force, or receipt, release or defeasance, writ, process or public record, or any other instrument whatever, shall be considered personal goods, of which larceny may be committed.

Sec. 833. If any person shall steal a horse, mare, gelding, foal or filly, ass or mule, or any one or more head of neat cattle, or any one or more head of sheep of any value, or if any person shall receive or buy any horse, mare, gelding, foal or filly, ass or mule, or any one or more head of neat cattle, or any one or more head of sheep, that shall have been stolen, with intent, by such receiving or buying, to defraud the owner, or if any person shall conceal any person guilty of stealing any of said property, knowing him to be the person who stole the same, or if any person shall conceal any horse, mare or gelding, foal or filly, ass or mule, or any one or more head of neat cattle, or any one or more head of sheep, knowing the same to have been stolen, any person so offending shall be deemed guilty of an offense against the laws of the territory of Washington, and, upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor not more than ten, nor less than one year; or, in the discretion of the court, the offender may be imprisoned in the county jail not exceeding one year, or fined not exceeding one hundred dollars, or both.

SEC. 834. Every person who shall falsely represent or personate another and in such assumed character shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed guilty of larceny, and shall, on conviction thereof be imprisoned in the penitentiary not more than fourteen years nor less than one year, or imprisoned in the county jail any length of time not exceeding one year.

SEC. 835. If any officer, agent, clerk, or servant, or person to whom any money or other property shall be entrusted for any specific purpose for hire, shall embezzle, or fraudulently convert to his own use, or shall take or secrete with intent to embezzle and fraudulently convert to his own use, any money or other property which shall have come into his possession, or shall be under his care or charge by virtue of such employment, or for such specific purpose, shall be deemed guilty of larceny, and on conviction thereof, be imprisoned in the penitentiary not more than ten years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.

SEC. 836. If any warehouseman, miller, storage, forwarding or commission merchant or his or their servants, agents, or clerks, shall willfully and fraudulently make, or alter any receipt or other written evidence of the delivery into the warehouse, mill, store or other building belonging to him, them, or either of them, or his or their employers, of any grain, flour, pork, beef, or wool, or other goods, wares, or merchandise, which shall not have been so received or delivered into such mill, warehouse, store, or other building, previous to the making and altering such receipt or other written evidence thereof, upon conviction thereof, shall be imprisoned in the penitentiary not more than two years, nor less than six months, or imprisoned in the county jail for any length of time not exceeding one year, and fined in any sum not exceeding one thousand dollars: *And provided further*, If any agent, clerk, officer, servant, or person to whom any money or other property, shall be entrusted, with or without hire, shall fraudulently convert to his own use, or shall fail to account to the person so entrusting it to him, he shall be deemed guilty of larceny, and, on conviction thereof, shall be imprisoned [in the penitentiary not more than ten years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.]

SEC. 837. All dogs in this territory are hereby declared to be personal property, and shall be as much the subject of larceny as any other kind of personal property, and every person stealing and taking away such dog, shall be liable to prosecution and indictment as in other cases of larceny.

Sec. 838. If any person maliciously kill, maim, or disfigure any horse, cattle, or other domestic beast of another; or maliciously administer poison to any such animal or animals; or expose any poisonous substance with intent that the same should be taken by it or them, he shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding three hundred dollars.

Sec. 839. Every person who shall mark or brand, or alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle, or sheep, goat, hog, shoat or pig, not his own property, but belonging to some other person, or cause the same to be done, with intent thereby to steal the same, or to prevent the identification thereof by the true owner, shall, on conviction thereof, be imprisoned in the penitentiary not more than five years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.

Sec. 840. It shall not be lawful for any person to cut off more than one-half of the ear or ears of any domestic animal such as an ox, cow, bull, calf, sheep, goat or hog, and any person cutting off more than one-half of the ear or ears of any such animals, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum less than twenty dollars.

Sec. 841. If any person maliciously injure, remove, or destroy any bridge, rail or plank road; or place or cause to be placed any obstruction on such bridge or road; or willfully obstruct or injure any public highway or road; or maliciously cut, burn, or in any way break down, injure, or destroy any telegraph post, or in any way cut, break, or injure the wires or any apparatus thereto belonging, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year. [See sec. 788, *ante.*]

Sec. 842. Every person who shall willfully and maliciously cut, break, injure or destroy any bridge, mill-dam, canal, flume, aqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water for mining or agricultural purposes, or any embankment necessary to the same, or either of them, or shall willfully or maliciously make or cause to be made, any aperture in the dam, canal, flume, aqueduct, reservoir, embankment or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or be imprisoned in the penitentiary at hard labor not more than two years, or both such fine and imprisonment.

Sec. 843. If any person maliciously cut away, let loose, injure or destroy any boom or raft of wood, logs or lumber, or any boat or vessel fastened to any place, of which he is not the owner or legal possessor, he shall be punished by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year, and shall also forfeit to the use of the person so injured, double the amount of damages by him thereby sustained, to be recovered in an action at law.

Sec. 844. If any person maliciously cut down, injure, or destroy any fruit, ornamental trees or other tree, vine, or shrub of another, standing or growing for ornament or use; or maliciously break down, mar, deface, or injure any fence, hedge, or ditch enclosing lands belonging to another;

or throw down or open any gate or bars not his own or under his charge and leave them open, whereby an injury is done to another; or maliciously injure, destroy, or sever from the land of another any produce thereof or anything attached thereto, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one hundred dollars, or by both imprisonment and fine at the discretion of the court.

Sec. 845. Any person who shall willfully or maliciously cut, carve, otherwise deface or injure any guide-board, bridge, building, column, monument or structure, grounds or trees, belonging to the public or any incorporated, charitable, religious, or scientific institution, shall, on conviction thereof, be fined in any sum not less than ten dollars, which shall be recoverable in any court having competent jurisdiction thereof.

Sec. 846. If any person place any obstruction in any of the public ditches or drains made for the purpose of draining any of the swamp lands in this territory, he shall, upon conviction, be compelled to remove such obstructions and be fined not less than five dollars nor more than one hundred dollars, or be imprisoned in the county jail not more than thirty days at the discretion of the court.

Sec. 847. Every person who shall willfully and maliciously set on fire, or cause to be set on fire any timber lands, woods, prairie, grass, pasturage or other grounds, other than his own, or shall intentionally or by gross neglect permit the fire to pass his own premises or grounds, to the injury of any other person or persons, shall, on conviction thereof, for every such offense, be fined in any sum not exceeding five hundred dollars.

Sec. 848. Any person or persons who shall purposely and maliciously break down, destroy or injure any fence, gate, sign-board, mile-post, car or other useful structure upon the line of any railroad, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding one year, or by both—fine and imprisonment, and any person or persons who shall paint, print or mark any fence, building, bridge or other structure with an advertisement, without first obtaining the consent of the agent or owner of such structure, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding fifty dollars.

Sec. 849. Every person who shall buy, receive, or aid in the concealment of stolen property, money or goods, knowing the same to have been stolen, shall, upon conviction thereof, be imprisoned in the penitentiary not more than four years nor less than one year, or imprisoned in the county jail not more than two years nor less than one month, and be fined not exceeding five hundred dollars, nor less than one hundred dollars.

Sec. 850. In any prosecution for the offense of buying, receiving, or aiding in the concealment of stolen money or other property, known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole such property has been convicted.

Sec. 851. All property obtained by larceny, robbery or burglary, shall be restored to the owner; and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his rights to such property; and it shall be the duty of the officer who shall arrest any person charged as principal or accessory in any robbery or larceny, to secure the property alleged to have been stolen, and he shall be answerable for the same, and shall annex a schedule thereof to his return of the warrant.

SEC. 852. Upon any conviction of burglary, robbery or larceny, the court may order a suitable recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a resonable allowance, for their time and trouble, to be paid by the county treasurer.

SEC. 853. If any person, with intent to defraud another, shall designedly, by color of any false token or writing, or any false pretense, obtain from any person any money, transfer, note, bond or receipt, or thing of value, such person shall, upon conviction thereof, be imprisoned in the penitentiary not more than five years, nor less than one year, or imprisoned in the county jail for any length of time not exceeding one year.

SEC. 854. Every person who shall falsely make or assist to make, deface, destroy, alter, forge, or counterfeit, or cause to be falsely made, defaced, destroyed, altered, forged or counterfeited, any record, deed, will, codicil, bond, writing obligatory, promissory note for money or property, receipt for property, power of attorney, certificate of a justice of the peace, or other public officer, auditor's warrant, treasury note, county order, acceptance or indorsement of any bill of exchange, promissory note, draft, or order, or assignment of any bond, writing obligatory, or promissory note for money or property, or any other instrument in writing, or any brand prescribed by law on tobacco, beef, bacon, or pork cask, lard keg or barrel, salt barrel or hay bale, or any person who shall utter or publish as true any such instrument, knowing the same to be false, defaced, altered, forged, or counterfeited, with intent to defraud any person, body politic or corporate, shall be deemed guilty of forgery, and on conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years nor less than one year, and be fined in any sum not exceeding five thousand dollars.

SEC. 855. Every person who shall cast, stamp, engrave, make or mend, or shall knowingly have in his possession any mould, pattern, die, puncheon, engine, press or other tool or instrument, adapted and designed for coining or making any counterfeit coin in the similitude of any gold or silver coin, current by law or usage in this territory, with intent to use the same, or cause or permit the same to be used or employed in coining or making any such false or counterfeit coin as aforesaid, shall, on conviction thereof, be imprisoned in the penitentiary not more than ten years, nor less than one year, and be fined in any sum not exceeding five thousand dollars, and all such tools, and instruments, intended for such purposes aforesaid, shall be destroyed.

SEC. 856. In any case where the intent to defraud is necessary to constitute the offense of forgery or any other offense that may be prosecuted, it shall be sufficient to allege in the indictment, an intent to defraud without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment it shall be deemed sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, territory, county, city, town or village, or any body corporate, or any public officer in his official capacity, or any co-partnership or member thereof, or any particular person, and persons of skill shall be competent witnesses to prove a forgery.

Sec. 857. Any person who shall counterfeit any kind or species of gold dust, gold bullion or bars, lumps, pieces or nuggets of gold, or any description whatsoever of uncoined gold, currently passing in this territory, or shall alter or put off any kind of uncoined gold mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind uncoined gold as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession, and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold as aforesaid, every such person so offending, or any person or persons aiding or abetting in or about said offense or offenses, shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one year, nor more than fourteen years.

Sec. 858. Every person who shall violently take or keep possession of any house, or close, with menaces, force and arms, and without the authority of law, shall be deemed guilty of forcible entry or forcible detainer, as the case may be, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

## CHAPTER LXX.

### OF OFFENSES AGAINST PUBLIC PEACE.

Section
859. Riot defined.
860. Dispersing riot. Punishment for refusal.
861. Same.
862. Disturbing religious society.
Section
863. Riotously destroying property.
864. Horse racing on public roads.
865. Rioting, racing and fighting on Sunday.
866. Affray.

Sec. 859. If three or more persons shall do an act in a violent and tumultuous manner, they shall be deemed guilty of riot, and upon conviction thereof shall be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding five hundred dollars, or be fined only.

Sec. 860. If three or more persons shall be unlawfully, riotously or tumultuously assembled, any justice of the peace, sheriff, deputy sheriff, constable, or marshal of a city, or mayor or alderman thereof, shall go among the persons so assembled, or as near to them as possible, and shall command them in the name of the territory of Washington, immediately to disperse. If the persons so assembled do not immediately disperse, it shall be lawful for every such officer to command sufficient aid, and to seize, arrest and secure in custody all such persons; and if necessary, an armed force may be called out, and shall obey the orders of any two of the magistrates or officers mentioned in this section, and if any such persons shall be killed or wounded by reason of their resisting the persons endeavoring to disperse or seize them, the magistrate or officers shall be held guiltless.

Sec. 861. All persons who shall have been commanded peaceably to disperse, who shall refuse so to disperse, or shall wilfully obstruct or hinder such officer, who shall declare himself as such, from commanding them to disperse, shall, on conviction, be imprisoned in the county jail not more than one year, and be fined in any sum not exceeding two hundred dollars, or fined only.

Sec. 862. Every person who shall disturb any religious society, or any member thereof, when met or meeting together for public worship, or shall sell or give away any spirituous liquor at any booth, wagon, shed or open place, or any boat, canoe or other water-craft, or in any building temporarily erected for the purpose of selling therein such liquors, within one mile of any collection of a portion of the citizens of this territory, convened for the purpose of worship, or shall disturb any collection of people for any unlawful purpose, such person shall, on conviction thereof, be imprisoned in the county jail not exceeding one month and be fined in any sum not exceeding two hundred dollars, or fined only.

Sec. 863. If any person or persons unlawfully or riotously assembled, pull down, injure, or destroy, or begin to pull down, injure or destroy, any dwelling house, or other building; or destroy or attempt to injure or destroy any boat or vessel; or perpetrate any premeditated injury on the person of another, not being a felony, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year, and shall also be answerable to any person injured to the full amount of the damages by him sustained in an action at law.

Sec. 864. Any person who shall be guilty of racing horses, or driving upon the public highway in a manner likely to endanger the persons or lives of others, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days.

Sec. 865. If any person be found on the first day of the week, commonly called Sunday, engaged in any riot, fighting or offering to fight, horse-racing or dancing, whereby any worshiping assembly, or private family are disturbed, every person so offending shall, on conviction, be fined in the sum of not to exceed one hundred dollars, to be recovered before any justice of the peace in the county where such offense is committed, and shall be committed to the jail of said county until the said fine, together with the costs of prosecution, shall be paid.

Sec. 866. If two or more persons by agreement fight in any public place, the person so offending shall be deemed guilty of any affray, and upon conviction thereof shall be imprisoned in the county jail not more than six months, and be fined in any sum not exceeding three hundred dollars, or be fined only.

## CHAPTER LXXI.

### OFFENSES AGAINST PUBLIC JUSTICE.

Section
867. Perjury defined.
868. Oath defined.
869. No defense that oath was taken in an irregular manner.
870. Sufficient that testimony was given, whether person competent witness or not.
871. Ignorance of materiality of evidence no defense.
Section
872. Deposition or certificate complete when delivered.
873. Unqualified statement of that which one does not know, perjury.
874. Punishment for perjury.
875. Official oath not included in preceding sections.
876. Subornation of perjury.
877. Attempt to procure another to commit perjury.

Sec. 867. Every person who, having taken an oath that he will testify, declare, depose or certify truly before any competent tribunal, officer or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states as true any material matter which he knows to be false, is guilty of perjury.

Sec. 868. The term "oath," as used in the last section, includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated.

Sec. 869. It is no defense to a prosecution for perjury that the oath was administered or taken in any irregular manner.

Sec. 870. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.

Sec. 871. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

Sec. 872. The making of a deposition or certificate is deemed to be complete within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

Sec. 873. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

Sec. 874. Every person convicted of the crime of perjury, committed on the trial of, or proceedings in a criminal action for a crime punishable with death or imprisonment for life, shall be punished by imprisonment in the penitentiary not less than five nor more than twenty years. Every person convicted of the crime of perjury, committed in any proceeding in a court of justice, other than such criminal action, shall be punished by imprisonment in the penitentiary, not less than three nor more than ten years, and every person convicted of the crime of perjury, committed otherwise than in a proceeding before a court of justice, or convicted of the crime of subornation of perjury, however committed, shall be punished by imprisonment in the penitentiary, not less than two nor more than five years.

Sec. 875. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by sections 867 and 868.

Sec. 876. Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

Sec. 877. If any person shall endeavor to procure or incite another to commit the crime of perjury, though no perjury be committed, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one nor more than three years.

## CHAPTER LXXII.

### OFFENSES BY AND AGAINST PUBLIC OFFICERS.

Section
878. Judicial officer receiving bribe.
879. Executive, legislative or ministerial officer receiving bribe.
Section
880. Punishment for bribery.
881. Aiding escape.

SECTION
882. Officer suffering escape.
883. " " " or refusing to receive prisoner.
884. Breaking jail.
885. Resisting or opposing an officer.
886. Refusing to aid officer.
887. Officer refusing to execute process.
888. Inhumanity to prisoners.
889. Failure to perform duty within time prescribed.
SECTION
890. Failure to pay money when prescribed.
891. Issuing county orders, when not authorized.
892. Falsely assuming to be officer or magistrate, etc.
893. Officiating before oath of office and bond is filed.
894. Exacting illegal fees, extortion.
895-6. Punishment for failure to make complaints.
897. Conviction of such offense vacates office.

SEC. 878. If any judge, justice of the peace, juror, commissioner, auditor, referee, arbitrator, or person summoned as a juror, shall accept, receive or agree for in any way, any bribe, present or reward to him offered for the purpose of obtaining or influencing his opinion, judgment, verdict, sentence, report or award, in any matter or cause depending or to be tried before him alone, or before him with others, he shall, on conviction thereof, be imprisoned in the penitentiary not more than seven years nor less than one year, or be imprisoned in the county jail not more than one year nor less than one month, and be fined in any sum not exceeding one thousand dollars.

SEC. 879. If any executive, judicial or ministerial officer, or member of the legislative assembly, shall accept or receive in any way, any bribe, present or reward to him offered, for the purpose of inducing or influencing such officer to appoint any person to office, to give any vote or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or voted or exercised any power in him vested, or performed any duty of him required with partiality or favor, or otherwise, contrary to law, he shall, on conviction thereof, be imprisoned in the penitentiary not more than ten years nor less than one year, or in the county jail not more than one year nor less than three months, and be fined in any sum not exceeding five thousand dollars.

SEC. 880. Every person who shall bribe, or offer or attempt to bribe, any of the officers mentioned in the two preceding sections, shall, on conviction thereof, be imprisoned in the county jail any length of time not exceeding one year, and be fined in any sum not exceeding two thousand dollars, or fined only.

SEC. 881. Every person who shall convey into any penitentiary, jail or house of correction, or house of reformation, any disguise, or any instrument, tool, weapon or other thing adapted to or useful in aiding any prisoner there lawfully committed or detained, to make escape, or shall by any means whatever aid or assist any such prisoner in his endeavor to escape therefrom, whether such escape be attempted or effected or not; and every person who shall aid or assist any prisoner in escaping, or in attempting to escape from any officer or person who shall have the lawful custody of such prisoner, or who shall forcibly rescue any prisoner from lawful custody of such persons, shall, on conviction thereof, be imprisoned in the penitentiary not more than four years nor less than one year, or imprisoned in the county jail any length of time not exceeding one year, and be fined in any sum not exceeding five hundred dollars.

SEC. 882. If any jailor or other officer shall voluntarily suffer any prisoner in his custody, charged with or convicted of any criminal offense, to escape, he shall suffer, unless the prisoner so escaping be charged with or convicted of any capital offense, the like punishment and penalties as the prisoner so suffered to escape was sentenced to, or would be liable to suffer upon conviction for the crime or offense wherewith he stood charged; and if the prisoner was charged with or convicted of a capital offense, he shall be imprisoned in the penitentiary not more than twenty years nor less than five years.

Sec. 883. If any jailor or other officer shall, through negligence, suffer any prisoner in his custody, upon conviction or upon any criminal charge to escape, or shall willfully refuse to receive into his custody any prisoner lawfully committed thereto, on any criminal charge or conviction, or on any lawful process whatever, he shall on conviction thereof, be imprisoned in the county jail not more than two years, and be fined not more than five hundred nor less than one hundred dollars, or fined only.

Sec. 884. If any person confined in any county jail upon any conviction for a criminal offense, break such jail and escape therefrom, he shall be imprisoned in such prison not exceeding one year, to commence from and after the expiration of the former sentence, and fined not exceeding three hundred dollars.

Sec. 885. If any person knowingly and willfully resist or oppose any officer of this territory or any other person authorized by law, in serving or attempting to execute any legal writ, rule, order or process whatsoever, or shall knowingly and willfully resist any such officer in the discharge of his duties without such writ, rule, order or process, he shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars nor less than fifty dollars, or by both fine and imprisonment at the discretion of the court.

Sec. 886. If any person, being lawfully required by any sheriff, deputy sheriff, coroner, constable, or other officer, willfully neglect or refuse to assist him in the execution of his office in any criminal case, or in any case of escape or rescue, he shall be punished by imprisonment in the county jail not more than six months, or by fine not more than one hundred dollars.

Sec. 887. If any officer authorized to serve process, shall willfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person charged with or convicted of any offense, or shall willfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall, on conviction thereof, be imprisoned in the county jail not more than one year, or be fined not exceeding three hundred, nor less than fifty dollars.

Sec. 888. If any sheriff, jailor or other officer shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, he shall, on conviction thereof, be imprisoned in the county jail not more than one year nor less than one day, and be fined in any sum not exceeding one thousand dollars.

Sec. 889. If any officer shall willfully fail to perform any duty within the time and in the manner prescribed by law, or shall do any act which he shall be specially prohibited from doing by law, he shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, to which may be added imprisonment in the county jail for any length of time not exceeding six months.

Sec. 890. If any officer or person required by law to collect, disburse, receive or keep any public money, shall willfully neglect or refuse to pay over such money at the time prescribed by law, or shall willfully refuse to pay any warrant lawfully drawn, or shall pay over a less valuable kind of money than that collected or received by him, or scrip, or county or territorial orders in lieu of money so collected or received by him in any sum whatever, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year nor less than one month, or be fined in any sum not exceeding five thousand dollars, or both.

Sec. 891. If any auditor shall knowingly issue any warrant not authorized by law, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding one thousand dollars, or be fined only.

Sec. 892. Every person who shall officiate in any place of authority, without being legally authorized, shall be deemed guilty of usurpation, and upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Sec. 893. If any person elected or appointed to an office, or his deputy, shall perform any of the duties of such office, without having taken an oath as prescribed by law, or before having given and filed the bond required of him, and in the manner prescribed by law, he shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Sec. 894. If any officer, whose fees are stated by law, shall corruptly exact or extort any greater fees for any services than by law are stated and allowed, or shall levy, demand, receive, or take under color of his office, any bond, bill or note, or other assurance or promise whatever, securing the payment of a greater sum of money for any service than he is by law authorized to demand or receive, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding one thousand dollars.

Sec. 895. It shall be the duty of all county school superintendents and school directors to make complaint in all cases which shall come to their knowledge of a criminal violation of the laws relating to schools and education. It shall be the duty of road supervisors to make complaint in all cases which shall come to their knowledge of a criminal violation of the laws relating to roads and highways. It shall be the duty of all constables and sheriffs to make complaint of all violations of the criminal law which shall come to their knowledge within their respective jurisdictions.

Sec. 896. Any officer who shall willfully and knowingly violate or refuse to perform the duty imposed by section 895 shall be guilty of a misdemeanor, and, on conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by fine and imprisonment, in the discretion of the court having jurisdiction thereof.

Sec. 897. A conviction of any officer, under the foregoing section, shall operate as a vacation of the office of the officer so convicted, and the office so vacated shall be filled in accordance with law.

## CHAPTER LXXIII.

### OFFENSES AGAINST PUBLIC POLICY.

SECTION
898. Nuisance public, fine for.
899. Malicious prosecution, penalty.
900. Transacting business without license.
901. Barrator, common, punishment.
902. Elector, fraud on.
903. Elector, fraudulent voting.
906. Ballots, folding or marking.
907-8. Disposing of liquors on election day.
909. Elector, intimidating.
910. Attempting to induce Indian to vote.
911. Allowing persons to vote improperly.
912. Refusing to perform duty as officers of elections.
913. Lotteries, selling tickets or conducting.
914. Gambling, prohibited.
915. Renting room or house for gaming.
916. Estray laws, violation of.
917. Obstructing highways.
918. Discharging ballast.
919. Obstructing navigable streams, etc.
920. County officers dealing in county orders.
SECTION
921. Supervisors to keep roads in good repair.
922. Fraud on jury box, or in drawing jurors.
923. Ferryman, demanding illegal rates.
924. Joining in marriage contrary to law.
925. Failing to return certificate of marriage.
926. Joining in marriage without authority.
927. Removing boundary monuments.
928. Mooring vessels to bridges.
929. Carrying concealed weapons.
930. Cruelty to animals.
931 Fast driving over bridges.
932. Bringing paupers into the territory.
933. Bringing diseased animals into the territory.
934. Compounding crime.
635. Poison, regulating sale of.
936-7-8. Poison, regulating sale of, use of, and punishment.
939. Selling liquor to minors.
940 Minors misrepresenting age.
941. Permitting minors to play cards.
942. Selling liquor to Indians.

SEC. 898. Every person who shall erect, or continue and maintain any public nuisance, to the injury of any part of the citizens of this territory, shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 899. If any person shall maliciously, without probable cause, attempt to cause an indictment to be found, or other prosecution for any crime or misdemeanor, to be commenced against any person, or if two or more persons shall conspire together for that purpose, the person so sought to be indicted or otherwise prosecuted being innocent, such person or persons so offending shall, on conviction thereof, be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceeding one thousand dollars.

SEC. 900. Every person who shall, by himself or agent, transact any business, or do any act, without a license therefor, where such license is required by any law in this territory, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, and in all such cases where the principal is prosecuted, his agent may be compelled to testify; and when the agent is prosecuted, the principal may be compelled to testify.

SEC. 901. Every person who shall excite quarrels or law-suits among the citizens of this territory, shall be deemed a common barrator, and, upon conviction thereof, shall be imprisoned in the county jail any length of time not exceeding six months, and be fined in any sum not exceeding five hundred dollars, or fined only.

SEC. 902. If any person shall fraudulently cause, or attempt to cause, any elector, at any election pursuant to law in this territory, to vote for a person different from the one he intended to vote for, such person so offending shall be fined not more than one hundred, nor less than ten dollars.

SEC. 903. If any elector shall vote or attempt to vote more than once at any election, or shall knowingly hand in two or more tickets together, or having voted in one township, precinct or county, shall afterwards, on the same day, vote or attempt to vote in another township, precint or county, such person shall be fined in any sum not exceeding fifty dollars, and be incapable of voting at any election, or holding any office for two years thereafter.

SEC. 904. If any inspector, judge, or clerk of an election shall attempt to induce, by persuasion, menace, or reward, or promise thereof, any elector to vote for any person, such person, so offending, shall be fined in any sum not exceeding one hundred dollars.

SEC. 905. If any person knowing that he does not possess the legal qualifications of a voter, at any election authorized by law to be held in this territory for any office whatever, shall vote at such election, such person so offending shall be fined not more than one hundred nor less than five dollars.

SEC. 906. If any judge, inspector, clerk or any other officer of an election, shall open or mark by folding or otherwise, any ticket presented by such elector at such election, or attempt to find out the names thereon, or suffer the same to be done by any other person, before such ticket is deposited in the ballot box, such person, so offending, shall be fined in any sum not exceeding one hundred dollars.

SEC. 907. It shall be unlawful in this territory for any person or persons to barter, sell, give away, or in any manner dispose of any intoxicating liquors, on the day of any general or special election of territorial, county or municipal officers within the territory, district, county, or corporation in which said election is held: *Provided*, That nothing in this section shall be construed to prevent the sale of intoxicating liquors after the polls have closed on election day.

SEC. 908. Any person or persons violating the provisions of section 907, shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars or by imprisonment in the county jail not less than ten nor more than thirty days, or both in the discretion of the court.

SEC. 909. If any person shall use any threats, menaces, force, or any corrupt means, at or previous to any election, held pursuant to the laws of this territory, towards any elector, to hinder or deter such elector from voting at such election, or shall directly or indirectly offer any bribe or reward of any kind, to induce any elector to vote contrary to his inclinations, or shall on the day of election give any public treat, or authorize any person to do so, to obtain votes for any person, such person so offending, shall be fined in any sum not exceeding five hundred dollars.

SEC. 910. If any person shall induce, or attempt to induce, any Indian to vote or offer his vote at any such election, such person so offending, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, to which may be added imprisonment in the county jail not to exceed three months: *Provided*, That this section shall not be so construed, as to include Indians, who are citizens and entitled to vote under the amendments to the constitution of the United States and the laws of congress.

SEC. 911. If any inspector or judge of any such election shall knowingly permit any elector to cast a second vote at any such election, or shall knowingly permit any person not a qualified elector to vote at any such election, such inspector or judge of election, upon conviction thereof, shall be imprisoned in the county jail not more than thirty nor less than ten days, be fined in any sum not exceeding five hundred dollars, and be incapable of holding any office in this territory for five years thereafter.

Sec. 912. Every person charged with the performance of any duty under the provisions of any law of this territory relating to elections, who willfully neglects or refuses to perform such duty, or who in the performance of such duty, or in his official capacity knowingly or fraudulently acts in contravention, or violation of any of the provisions of law relating to such duty, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, to which punishment may be added imprisonment in the county jail, for a term not exceeding one year.

Sec. 913. Every person who shall sell any lottery tickets, or shares in any lottery, for the division of property to be determined by chance, or shall make or draw any lottery or scheme for a division of property, not authorized by law, on conviction thereof, shall be fined in any sum not exceeding five hundred dollars: *Provided*, That nothing herein contained shall apply to any lottery for charitable purposes.

Sec. 914. Every person who shall deal at the game of cards called faro or monte or other banking game or shall set up, keep or exhibit an E. O. or roulette table or shuffle board, or any gaming table whatever, for the purpose of gaming, or shall have in his possession, to be used for such purpose any gaming device whatever, and every white man, negro, half-breed Indian, Kanaka or Chinaman who shall play at any game of cards or any game of chance with any Indian for fun, pleasure, luck, money, or anything of value whatever, or for anything whatever, or any white man, negro, half-breed Indian, Kanaka, or Chinaman who shall run horses on a wager of any kind, or for pastime, with an Indian, shall be subject on conviction thereof, for each and every offense to a fine of not less than fifty dollars and not exceeding five hundred dollars, or to both a fine and imprisonment not exceeding six months. And it is hereby made the duty of any prosecuting attorney, sheriff, constable or justice of the peace having knowledge of the violation of this section to report the same to a justice of the peace in the county in which such offense was committed, or to the grand jury for such county. [See section 1253 infra.]

Sec. 915. Every person who shall let or rent any room or building for a gaming house or house of ill-fame, or for rent or hire shall permit any game to be dealt upon his premises prohibited by the preceding section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars. [See sections 1256 to 1258 inclusive, infra.]

Sec. 916. If the taker up of estray property shall convert the same to his own use, before the title thereto shall vest in him according to law, or if he shall knowingly and willfully violate any of the provisions of the law regulating the taking up of estrays, such person, so offending, shall be fined in any sum not exceeding five hundred dollars, and not less than double the value of such estray property.

Sec. 917. Every person who shall in any manner obstruct any public highway, turnpike, plank road, or bridge, or injure any material used in the construction of such road or bridge, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

Sec. 918. Every master, or mate, or other officer, or other person, belonging to or, in charge of any vessel, who shall discharge or cause to be discharged the ballast of such vessels into the navigable portions or channels of any of the inlets, bays, harbors, or rivers within or bordering on this territory, where the water is less than twenty fathoms deep, shall on conviction thereof be fined in any sum not less than seventy-five dollars nor more than five hundred dollars: *Provided*, That nothing in this section shall be so construed as to prevent any such person from discharging ballast from such vessel on the beach at or above ordinary high tide in all waters where the tide ebbs and flows, and that no ballast shall be discharged on any of the flats included within the boundary of any town site or extension thereof.

SEC. 919. Every person who shall in any manner obstruct the navigable portion or channel of any bay, harbor, or river, or stream, within or bordering upon this territory, navigable and generally used for the navigation of vessels, boats, or other water-crafts, or for the floating down of logs, shall, on conviction thereof be fined in any sum not exceeding five hundred dollars: *Provided*, That the placing of any mill dam or boom across a stream, used for floating saw logs, shall not be construed to be an obstruction to the navigation of such stream, if the same shall be so constructed as to allow the passage of boats or logs without unreasonable delay.

SEC. 920. If any auditor, treasurer, sheriff, assessor, or county commissioner shall purchase, exchange, or receive in payment, during his term of office, any territorial or county order, or demand, for less than the amount of such order or demand, he shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 921. If any supervisor of roads fail to keep the highways and bridges in his road district in as good repair as the available labor or other means of such district will enable him to do, or fail to discharge any other duty required of him by law, he shall, on conviction thereof, be fined in any sum not exceeding two hundred dollars, and upon prosecution for neglecting to keep a highway in good repair, it shall be sufficient to prove that such highway is commonly reputed as such.

SEC. 922. If any clerk of a district court, or any other person, shall be guilty of any fraud, either by practicing on a jury box previously to a draft, or in changing a juror, or any way in drawing of jurors, he shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 923. If any ferryman, ferry owner, ferry keeper, or keeper of a toll bridge or toll gate, himself, or by any person in his employment, shall demand or receive any greater fees on account of ferriage or toll, than is or may be fixed by law, or by the proper board doing county business, as the rates of ferriage or toll to be received by such person, upon conviction thereof, he shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding one month.

SEC. 924. Any person authorized by the laws of this territory to join parties in marriage, who shall knowingly join in marriage any parties contrary to the provisions of the law regulating marriages, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 925. Any person, having joined parties in marriage who shall fail to return a certificate thereof, within the time prescribed by law, shall be fined in any sum not exceeding three hundred dollars.

Sec. 926. Every person who shall undertake to join parties in marriage, knowing that he is not authorized so to do, shall, upon conviction thereof, be imprisoned in the county jail not more than three months or fined in any sum not exceeding five hundred dollars.

Sec. 927. Every person who shall willfully or maliciously remove any monuments of stone, wood or other durable material, lawfully erected for the purpose of designating the corner or any other point in the boundary of any lot or tract of land, or any post or stake lawfully fixed or driven in the ground for the purpose of designating a point in the boundary of any lot or tract of land, or alter the marks upon any tree, post, or other monument lawfully made for the purpose of designating any point, course, or line in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction thereof, be imprisoned in the county jail.

Sec. 928. Every person who shall moor or chain any steamer, sloop, scow or other vessel, or raft, or boom of logs to the piling, piers, abutments, or other supports of any bridge within this territory, shall, on conviction thereof, be fined in any sum not exceeding three hundred dollars nor less than fifty dollars.

Sec 929. If any person carry upon his person any concealed weapon, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than thirty days: *Provided*, That this section shall not apply to police officers and other persons whose duty it is to execute process or warrants, or make arrests.

Sec. 930. If any person torture, torment, deprive of necessary sustenance, cruelly beat, mutilate, cruelly kill or over drive any animal; or cruelly drive or work the same when unfit for labor; or cruelly abandon the same; or carry or cause the same to be carried on any vehicle, or otherwise, in an unnecessarily cruel and inhuman manner, he shall be punished by imprisonment in the county jail not exceeding thirty days, or by fine not exceeding one hundred dollars.

Sec. 931. That any person or persons riding or driving faster than a walk, over any bridge located on any county or territorial road, composed of one or more spans, upon conviction thereof, shall be fined in any sum not to exceed ten dollars nor less than five dollars, to be collected by any court having competent jurisdiction thereof; and all moneys, so collected, shall be paid into the county treasury and become a part of the school fund: *Provided*, That this section shall apply *only* to bridges over thirty feet in length.

Sec. 932. If any person knowingly bring within this territory any pauper or poor person, with the intent of making him a charge on any county or counties therein, he shall be punished by fine not exceeding five hundred dollars and stand charged with his support.

Sec. 933. If any person knowingly import or bring within this territory, any horse, mule, or ass, affected by the disease known as nasal gleet, glanders, or button farcy, or suffer the same to run at large upon any common, highway, or uninclosed land, or use or tie the same in any public place, or off his own premises, or sell, trade, or offer for sale or trade any such horse, mule or ass, knowing the same to be so diseased, he shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine of not less than fifty dollars nor more than five hundred dollars; and if any horse, mule, or ass, reasonably supposed to be diseased with nasal gleet, glanders or button farcy, be found running at large without any known owner, it shall be lawful for the finder thereof to take such horse, mule or ass, so found, before some justice of the peace, who shall forthwith cause the same to be examined by some veterinary surgeon, or other person skilled in such diseases, and if, on examination, it is ascertained to be so diseased, it shall be lawful for such justice of the peace to order such diseased animal to be immediately destroyed and buried; and the necessary expense accruing under the provisions of this section shall be defrayed out of the county treasury.

Sec. 934. If any person having knowledge of the commission of any crime, shall take any money, gratuity, reward, or any engagement therefor, upon an agreement or understandig, express or implied, to compound or conceal such crime, or not to prosecute therefor, he shall, on conviction thereof, be imprisoned in the county jail for any length of time not exceeding one year, or be fined in any sum not exceeding one thousand dollars.

Sec. 935. It shall be unlawful for any druggist, or other person to sell, give, or in any manner furnish to any Indian, minor, intoxicated person, or person of unsound mind, any poisonous drug, or compound, destructive of human or animal life.

Sec. 936. Every druggist shall keep a book in which he shall register the name of any person purchasing or receiving from him any such poisonous drug or compound, unless the same shall be furnished upon the prescription of a competent physician, together with the name of such drug or compound, and the time when it was furnished.

Sec. 937. Every person who shall place any poison outside of his own building, or out buildings, for the destruction of noxious animals, or for any purpose whatever, shall give notice to all persons, or families residing within one mile of the place where such poison is used, by posting notices in three of the most public places within one mile of where said poison is to be put out, but this notice shall not apply to such use of poison within the limits of an incorporate town.

Sec. 938. Every person violating any of the provisions of sections 935, 936 and 937, shall be fined in any sum not exceeding five hundred dollars, and may be imprisoned until the fine and costs are paid.

Sec. 939. Every person who shall knowingly sell or give to a minor, intoxicating or spirituous liquors, without the written permission of the parent or guardian of such minor, shall on conviction thereof, be fined in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for a term not exceeding three months, or both.

Sec. 940. Any minor over the age of eighteen years and under the age of twenty-one years, who shall represent to any person dealing in spirituous, malt or fermented liquors, that he is of lawful age, and by means of such misrepresentation procure from such dealer spirituous, malt or fermented liquors, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars nor less than twenty-five dollars, or imprisoned in the county jail any length of time not exceeding three months.

Sec. 941. If any person shall allow any minor to play at cards in his house, without the written permission of the parent or guardian, he shall be liable to the same penalties as for furnishing to such minor spirituous liquors, as mentioned in section 940.

Sec. 942. Any tavern keeper, grocery keeper, brewer, distillers, or person or persons, Indian or Indians, who shall sell, barter, give, or in any manner dispose of any wines, spirituous liquors, ale, beer, porter, cider, or any other intoxicating beverage, to any Indian or Indians, within this territory, every such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, by any court having competent jurisdiction to try the same, shall forfeit and pay to the use of the county in which the offense may have been committed, a fine of not less than twenty-five dollars and not more than one hundred dollars for each and every offense, and in all prosecutions under this section, Indians shall be competent as witnesses.

## CHAPTER LXXIV.

### OFFENSES AGAINST MORALITY AND DECENCY.

Section
943 Adultery and fornication, living in; punishment.
944. Adultery; punishment.
944. When but one of the parties is married.
945. Bigamy defined; punishment.
946. Exceptions to preceding section.
917. Unmarried person marrying husband or wife of another knowingly.
948. Lewd cohabitation; punishment.
Section
948. Open or gross lewdness; punishment.
948. Indecent or obscene exposure; punishment.
949. Marriage, prohibitory degrees.
949. Incest; defined.
950. Obscene literature, circulation of.
951. Disinterment, illegal.
952. Disfiguring or removing tombstones, monuments, etc.
952. Using cemetery other than as burying ground.

Sec. 943. Every person who shall live in open and notorious adultery or fornication, shall, upon conviction thereof, be imprisoned in the county jail not exceeding two years, or be fined in any sum not exceeding five hundred dollars, or fined only.

Sec. 944. Every person who commits the crime of adultery, shall be punished by imprisonment in the penitentiary not more than three years, or by fine not exceeding three hundred dollars and imprisonment in the county jail not exceeding one year; and when the crime is committed between parties only one of whom is married, both are guilty of adultery and shall be punished accordingly.

Sec. 945. If any person who has a former husband or wife living, marry another person, or continue to cohabit with such second husband or wife in this territory, he or she, except in the cases mentioned in the following section, is guilty of bigamy and shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year.

Sec. 946. The provisions of the preceding section do not extend to any person whose husband or wife has continually remained beyond seas or who has voluntarily withdrawn from the other and remained absent for the space of five years together, the party marrying again not knowing the other to be living within that time; nor to any person who has good reason to believe such husband or wife to be dead; nor to any person who has been legally divorced from the bonds of matrimony.

Sec. 947. Every unmarried person who knowingly marries the husband or wife of another, when such husband or wife is guilty of bigamy thereby, shall be punished by imprisonment in the penitentiary not exceeding three years, or by fine not more than three hundred dollars or imprisonment in the county jail not exceeding one year.

Sec. 948. If any man or woman not being married to each other lewdly and viciously associate and cohabit together, or if any man or woman, married or unmarried, is guilty of open or gross lewdness, or designedly make any open and indecent or obscene exposure of his or her person, or of the person of another, every such person shall be punished by imprisonment in the county jail not exceeding six months or by fine not exceeding two hundred dollars.

Sec. 949. Marriages in the following cases are prohibited:

1. When either party thereto has a wife or husband living at the time of such marriage.

2. When the parties thereto are nearer of kin to each other than second cousins, whether of the whole or half-blood computing by the rules of the civil law.

3. It shall be unlawful for any man to marry his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter or sister's daughter; it shall be unlawful for any woman to marry her father's brother, mother's brother, mother's husband, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, brother's son or sister's son; and if any person being within the degrees of consanguinity or affinity in which marriages are prohibited by this section, carnally know each other, they shall be deemed guilty of incest, and shall be punished by imprisonment in the territorial penitentiary for a term not exceeding ten years and not less than one year.

Sec. 950. Every person who shall print, publish, sell, or distribute any book, or any pamphlet, ballad, printed paper or other thing, containing obscene language or obscene prints, pictures, figures or descriptions, or shall introduce into any family, school, or other place of education, or shall buy, procure, receive or have in his possession any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of loan, sale, exhibition or circulation, or with the intent to introduce the same into any family, school or place of education, or shall expose the same to public view, shall, on conviction thereof, be imprisoned in the county jail not more than six months, or be fined in any sum not exceeding five hundred dollars.

Sec. 951. If any person not being lawfully authorized, shall willfully dig up, disinter, remove or convey away any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender, and every person accessory thereto, either before or after the fact, shall, upon conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined not exceeding one thousand dollars, or fined only.

Sec. 952. Every person who shall willfully disfigure, injure or remove any tombstone, monument, fence, tree or shrubbery around or within any cemetery, or shall use such cemetery for another purpose than a burying ground, he shall, upon conviction thereof, be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceeding five hundred dollars, or shall be fined only.

## CHAPTER LXXV.

### OFFENCES AGAINST PUBLIC HEALTH.

SECTION
953. Selling diseased or unwholesome provisions.
954. Selling poisons without labelling.

SECTION
955. Prescribing, while intoxicated, drugs or poison.

SEC. 953. Every person who shall knowingly sell any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall, on conviction thereof, be imprisoned in the county jail not more than one year, and be fined not exceeding one thousand dollars, or fined only.

SEC. 954. Every apothecary, druggist or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, strychnine or other active poison, without having the word "poison," and the true name thereof in English written or printed upon a label attached to the vial, box or parcel containing the same, shall, on conviction thereof, be imprisoned in the county jail not more than six months, and be fined in any sum not exceeding one hundred dollars, or fined only.

SEC. 955. If any physician or other person, while in a state of intoxication, shall prescribe any poison, drug or other medicine to another person, to his injury, he shall, on conviction thereof, be imprisoned in the county jail for any length of time not exceeding one year, and fined not exceeding five hundred dollars, or fined only.

## CHAPTER LXXVI.

### PARTIES TO CRIME.

SECTION
956. Accessory before fact indicted as a principal; certain distinction. abrogated.
957. Assisting principal escape; accessory after fact.

SECTION
958. Accessory after fact triable, whether principal convicted or not.

SEC. 956. No distinction shall exist between an accessory before the fact and a principal, or between principals in the first and second degree, and all persons concerned in the commission of an offense, whether they directly counsel the act constituting the offense, or counsel, aid and abet in its commission, though not present, shall hereafter be indicted, tried and punished as principals.

SEC. 957. Every person not standing in the relation of husband or wife, parent or grand parent, child or grand child, brother or sister, by consanguinity or affinity to the offender, who, after the commission of any felony, shall harbor, conceal, or maintain, or assist any principal felon or accessory before the fact, or shall give the offender any other aid, knowing that he had committed a felony, or had been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial or punishment, shall be deemed accessory after the fact, and shall, on conviction thereof, be imprisoned in the county jail not more than one year, or be fined in any sum not exceeding five hundred dollars.

SEC. 958. Every person who shall become an accessory after the fact to any felony, may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously, or shall, or shall not be amenable to justice by any court having jurisdiction to try the principal felon, and either in the county where such person shall become an accessory or in the county where such (principal) felony shall have been committed.

## CHAPTER LXXVII.

### GENERAL PROVISIONS RELATIVE TO CRIMES AND PUNISHMENTS.

SECTION
959. Trial of offenses committed partly in one county and partly in another.
960. Of offenses committed on boundary line of two counties.
961. If property stolen in one county and brought into another, jurisdiction in either county.
962. Wound given in one county, death in another, jurisdiction in either.
963. Variance between proof and indictment; when material,
964. Term "person" defined.
965. Words and terms defined.
966. "Counties" and "districts," defined.

SEC. 959. When a public offense has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

SEC. 960. Offenses committed on the boundery line of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed in either of them, and may be prosecuted and punished in either county.

SEC. 961. When property taken in one county by burglary, robbery, larceny or embezzlement, has been brought into another county, the jurisdiction is in either county.

SEC. 962. If any mortal wound is given, or poison administered in one county, and death, by means thereof, ensue in another, the jurisdiction is in either,

SEC. 963. In the prosecution of any offense committed upon, or in relation to, or in any way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on trial that at the time when such offense was committed, either the actual or constructive possession, or the general or special property in the whole, or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof.

SEC. 964. When the term "person" or other word is used to designate the party whose property is the subject of an offense, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this territory, or any state or territory, or any public or private corporation, as well as an individual.

SEC. 965. Every term in this act implying one only, shall, when required, be construed to mean two or more, and any term implying two or more, shall also be construed to mean, when required, but one except in cases where two or more are necessary to constitute the offense, and every term implying sex, shall, when necessary, be construed to mean both or either.

SEC. 966. So far as the jurisdiction of offenses cognizable by the district court, and the trial of criminals is concerned, each judicial district shall constitute one county; and whenever in this act the word "county" or "district" occur, they shall be construed to mean either "district" or "county."

## CHAPTER LXXVIII.

### OF SEARCH WARRANTS AND PROCEEDINGS THEREON.

SECTION
967-8. When search warrant may issue.
969. To whom directed and what to contain.
SECTION
970. Duty of officer.
970. Certain articles to be destroyed.

SEC. 967. When complaint shall have been made on oath, to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretenses, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue a warrant for such property.

SEC. 968. Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search warrant in the following cases, to wit:

1. To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

2. To search for and seize any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

SEC. 969. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he is required to search are believed to be concealed, which place and property, or things to be searched for shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who shall issue the warrant, or before some other magistrate or court having cognizance of the case.

SEC. 970. When any officer in the execution of a search warrant shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by this chapter, all the property and things so seized, shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced in evidence on any trial, and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant shall be destroyed under direction of the court or magistrate.

## CHAPTER LXXIX.

### DEMANDING FUGITIVES FROM JUSTICE.

SECTION
971. Governor may appoint agents to demand procedure.
972. Surrender of, to other states, etc.
973. Warrants may issue as in criminal case.
SECTION
974. Defendant to recognize, until requisition.
975. When to be discharged.
976. Liability of person causing warrant.
976. Defendant discharged, if jail fees not paid.

SEC. 971. The governor of this territory may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any state or territory, any fugitive from justice, or any other person charged with felony or any other crime in this territory, and whenever an application shall be made to the governor, for that purpose, the prosecuting attorney or any other prosecuting officer of the territory, when required by the governor, shall forthwith investigate the ground of such application and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence and his opinion as to the expediency of the demand, but the governor may, in any case, appoint such agents without requiring the opinion of, or any report from the prosecuting attorney, and the accounts of the agents appointed for such purpose, shall in all cases be audited by the territorial auditor and paid from the territorial treasury.

SEC. 972. When a demand shall be made upon the governor of this territory by the executive of any state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory with treason, felony or any other crime, the prosecuting attorney or any other prosecuting officer, when required by the governor, shall forthwith investigate the ground of such demand, and report to the governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially as to whether he is held in custody or is under recognizance to answer for any offense against the laws of this territory or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the governor be satisfied that such demand is conformable to law and ought to be complied with, he shall issue his warrant under the seal of the territory, authorizing the agents who make such demand, either forthwith or at such time as shall be designated by the warrant, to take and transport such person to the line of the territory at the expense of such agents, and shall also by such warrant require the civil officers within this territory to afford all needful assistance in the execution thereof.

SEC. 971- Whenever any person shall be found within this territory charged with an offense committed in any state or territory, and liable by the constitution and laws of the United States, to be delivered on the demand of the executive of such state or territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offense, and such other matters as are necessary to bring the offense within the provisions of law, issue a warrant to bring the person so charged before the same or some other court, or magistrate, so authorized within the territory, to answer such complaint as in other cases.

SEC. 974. If, upon the examination of the person charged, it shall appear to the court or magistrate, by proof in addition to the oath of the complainant, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain a warrant of the executive, and to abide the order of the court or magistrate, and if such person shall not so recognize, he shall be committed to prison and there be detained until such day, in like manner as if the offense charged had been committed in this territory; and if the person so recognizing shall fail to appear according to the conditions of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison, and there be detained until the day so appointed for his appearance before the court or magistrate.

Sec. 975. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some persons authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or require of him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and be detained as before provided. Whenever the person so appearing shall be recognized, committed or discharged, any person authorized by the warrant of the executive may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

Sec. 976. The Complainant in such cases shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailor one week's board at the time of commitment, and so from week to week, so long as such person shall remain in jail; and if he fails to do so, the jailor may forthwith discharge the person from his custody.

## CHAPTER LXXX.

### OF THE GRAND JURY.

Section
977. Challenge to the panel.
978. Challenge to individual jurors.
979. If allowed to the panel.
980. If allowed to an individual.
981. Oath of grand juror; form.
982. Foreman, powers of
983. Charge, by the court.

Section
984. Prosecuting attorney must attend.
985-6-7-8-9 What grand jury shall inquire into.
990. Not bound to hear evidence for defendant.
991. Grand juror, shall not disclose finding, when.
992. Grand juror shall not disclose vote.
993. Grand jury may be summoned again at same term.

Sec. 977. Challenges to the panel shall be allowed to any person in custody or held to answer for an offense, when the clerk has not drawn from the jury box the requisite number of ballots to constitute a grand jury, or when the drawing was not done in the presence of the proper officers; and such challenges shall be in writing and verified by affidavit, and proved to the satisfaction of the court.

Sec. 978. Challenges to individual grand jurors may be made by such person for reason of want of qualification to sit as such juror; and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice.

Sec. 979. If a challenge to the panel be allowed, the panel shall be discharged, and the court may order the sheriff to summon from the bystanders and the body of the county a sufficient number of persons to act as grand jurors at such term of the court.

Sec. 980. If a challenge to an individual juror be allowed, he shall be discharged and the panel filled.

Sec. 981. The following oath shall be administered to the grand jury: "You, as grand jurors for the body of the (district or county, as the case may be,) do solemnly swear (or affirm) that you will diligently inquire into, and true presentment make, of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the United States of America, your own counsel and that of your fellows, you shall keep secret; you shall present no person through envy, hatred or malice; neither will you leave any person unpresented through fear, favor, affection or reward, or the hope thereof; but that you will present things truly as they come to your knowledge, according to the best of your understanding, and according to the laws of this territory, so help you God."

Sec. 982. A foreman of the grand jury shall be appointed by the court, who may remove him and appoint another at any time, and such foreman shall have power to administer all oaths and affirmations to witnesses who shall appear before such grand jury, and the jury may appoint one of their number as clerk to keep a minute of their proceedings.

Sec. 983. The grand jury shall be charged by the court as to the nature of their duties, and may at any reasonable time ask the advice of the court as to any legal questions upon which they may desire information.

Sec. 984. The prosecuting officer may attend on the grand jury for the purpose of examining witnesses and giving them such advice as they may ask.

Sec. 985. The grand jury shall inquire into the cases of parties in custody or under bail, charged with commission of offenses against the laws of the United States or of this territory, and duly returned by a committing magistrate, justice of the peace or United States commissioner, or upon a complaint sworn to before an officer authorized to administer oaths and presented by the prosecuting attorney, or under the instructions of the court.

Sec. 986. If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow jurors, who may thereupon investigate the same, if a majority so order.

Sec. 987. No complainant who may institute a prosecution shall be competent to be present at the deliberations of a grand jury, or vote for the finding of an indictment.

Sec. 988. Where a grand jury ignore a bill of indictment, they shall also find whether the prosecution is malicious and frivolous, and find whether the complainant or county shall pay the costs, which shall be returned with their proceedings into open court.

Sec. 989. The grand jury shall especially inquire as to the offense of any person confined in prison on a criminal charge; into the condition and mismanagement of the public prisons in the county; into the willful misconduct in office of public officers, and shall in their discretion examine the public records of the county.

Sec. 990. The grand jury are not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge they should order such evidence to be produced, and for that purpose may cause process to issue for the witnesses.

Sec. 991. No grand jury shall disclose the fact that an indictment for a felony has been found against any person not in custody or under recognizance, until such person has been arrested.

Sec. 992. No grand jury shall be allowed to state or to testify in any court in what manner he or any member of the jury, voted on any question before them, or what opinion was expressed by any juror in relation to such question, or what question was before them; and in charging the grand jury the court shall remind them of the provisions of this and the preceding sections.

Sec. 993. Whenever the grand jury shall have been dismissed at any term of the court for which they shall have been impanneled, before the final adjournment, they may be summoned to attend again at the same term, if necessary; and if a full jury do not attend, the number may be completed from the bystanders.

## CHAPTER LXXXI.

### FINDING AND PRESENTATION OF THE INDICTMENT.

Section
994. Cannot be found without twelve concur.
995. Witnesses names must be endorsed on.
996. When found at instance of private prosecutor, indictment must so state.
997. How presented and filed.

Section
998. No juror must disclose facts concerning.
999. Jury must destroy papers, when,
1000. If no bill is found, charge is dismissed.
1001. Presentment, requisites of.

Sec. 994. An indictment cannot be found without the concurrence of at least twelve grand jurors, and when so found, it must be endorsed "a true bill" and such endorsement signed by the foreman of the jury.

Sec. 995. When an indictment is found, the names of the witnesses examined before the grand jury must be inserted at the foot of the indictment, or endorsed thereon, before it is presented to the court, and the clerk of the court must, within one day after demand made, furnish the defendant or his counsel a copy thereof without charge, or permit the defendant's counsel, or the clerk of such counsel, to take a copy.

Sec. 996. When an indictment is found at the instance of a private prosecutor, the following must be added to the endorsement required by the preceding section, "found at the instance of," (here state the name of the person,) and in such case, if the prosecution fails, the court trying the cause may award costs against the private prosecutor, if satisfied, from all circumstances, that the prosecution was malicious or without probable cause.

Sec. 997. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and filed by the clerk, and remain in his office as a public record; but if the defendant has not been held to answer the charge, neither the indictment or any order or process in relation thereto, must be inspected by any person other than the judge of the court or an officer thereof in the discharge of a duty concerning the same, until after the arrest of the defendant.

Sec. 998. No grand juror or officer of the court must disclose any fact concerning such indictment while it is not subject to public inspection; and a violation of this section or the foregoing section is punishable as a contempt.

Sec. 999. When a person has been held to answer a criminal charge, and the indictment in relation thereto is not found "a true bill," it must be endorsed "not a true bill", which endorsement must be signed by the foreman, and presented to the court and filed with the clerk, and remain a public record; but in the case of an indictment not found "a true bill," against a person not so held, the same, together with the minutes of the evidence in relation thereto, must be destroyed by the grand jury.

SEC. 1000. When an indictment, endorsed "not a true bill," has been presented in court and filed, the effect thereof is to dismiss the charge; and the same cannot be again submitted to or inquired of by the grand jury, unless the court so order.

SEC. 1001. A presentment is made to the court, by the foreman, in the presence of the grand jury, and with the concurrence of twelve of their number; but being a mere informal statement of facts, for the purpose of obtaining the advice of the court as to the law arising thereon, is not to be filed in court or preserved beyond the sitting of the grand jury.

## CHAPTER LXXXII.

### THE INDICTMENT.

SECTION
1002. Forms of pleading heretofore existing abolished.
1003. First pleading on part of Territory,
1004. What must contain.
1005. Form of.
1006. Must be direct and certain, as to what.
1007. Fictitious name, when defendant indicted by.
1008. But one crime and in one form.
1009. Time, when necessary to state precisely.
1010. Erroneous statement as to person injured, not material.
1011. Animal, name of class sufficient.
1012. Words and phrases, how construed.
1013. Words and phrases of statutes, construed.
1014. Requisites and sufficiency of.
1015. Not insufficient for want of certain matters.
1016. Presumptions of law, nor matters of judicial knowledge.
1017. Judgment or other determination; court of special jurisdiction.
1018. Private statute, how to plead.
1019. Libel; what necessary to set forth.
1020. Forgery; in case of lost instrument.
1021. Perjury and subornation of perjury; what necessary to set forth.
1022. When several are indicted, one or more may be acquitted.
1023. For embezzlement or larceny of money, bank notes, etc.; or conspiracy to cheat or defraud a person of such property; what necessary.
1024. For exhibiting or circulating obscene literature.
1025. Certain property, ownership of.

SEC. 1002. All the forms of pleading in criminal actions heretofore existing, are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be detemined, are those prescribed herein.

SEC. 1003. The first pleading on the part of the territory is the indictment.

SEC. 1004. The indictment must contain:

1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties.

2. A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

SEC. 1005. The indictment may be substantially in the following form:

| | |
|---|---|
| "THE TERRITORY OF WASHINGTON,<br>vs.<br>A—— B—— | District court for the——<br>Judicial district of W. T.,<br>holding terms at ——. |

A B is accused by the grand jury of the ————, by this indictment, of the crime of ————," (here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter or the like, or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law,) "committed as follows;

"The said A B, on the ——day of ———, 18—, in the county of—— in the district aforesaid," (here set forth the act, charged as a crime). Dated at——, in the district aforesaid, the—— day of ——, A. D. 18—." (Signed) "C D, district attorney." (Endorsed) "a true bill."

(Signed) "E F, foreman of the grand jury."

Sec. 1006. The indictment must be direct and certain, as it regards:

1. The party charged.
2. The crime charged; and,
3. The particular circumstances of the crime charged when they are necessary to constitute a complete crime.

Sec. 1007. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Sec. 1008. The indictment must charge but one crime, and in one form only, except that where the crime may be committed by use of different means, the indictment may allege the means in the alternative.

Sec. 1009. The precise time at which the crime was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, and within the time which an action may be commenced therefor, except where the time is a material ingredient in the crime.

Sec. 1010. When the crime involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to indentify the act, an erroneous allegation as to the person injured or intended to be injured is not material.

Sec. 1011. When a crime involves the taking of or injury to an animal, the indictment is sufficiently certain in that respect if it describe the animal by the common name of its class.

Sec. 1012. The words used in an indictment must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

Sec. 1013. Words used in a statute to define a crime, need not be strictly pursued in the indictment, but other words, conveying the same meaning, may be used.

Sec. 1014. The indictment is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive.
2. That it was found by a grand jury of the county or district in which the court was held.
3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his real name is to the jury unknown.
4. That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein.
5. That the time [crime] was committed at some time previous to the finding of the indictment, and within the time limited by law for the commencement of an action therefor.
6. That the act or omission, charged as the crime, is clearly and dis-

tinctly set forth, in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

7. The act or omission, charged as the crime, is stated with such a degree of certainty as to enable the court to pronounce judgment, upon a conviction, according to the right of the case.

SEC. 1015. No indictment is insufficient, nor can the trial, judgment or other proceedings thereon, be affected by reason of any of the following matters, which were formerly deemed defects or imperfections:

1. For want of an allegation of the time or place of any material fact, when the time and place have been once stated;

2. For the omission of any of the following allegations, namely: "with force and arms," "contrary to the form of the statute, or the statutes," or "against the peace and dignity of the territory."

3. For the omission to allege that the grand jury was empaneled, sworn or charged;

4. For any surplusage or repugnant allegation, or for any repetition, when there is sufficient matter alleged to indicate clearly the offense and the person charged; nor,

5. For any other matter which was formerly deemed a defect or imperfection, but which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

SEC. 1016. Neither presumptions of law, nor matters of which judidicial notice is taken, need be stated in an indictment.

SEC. 1017. In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment, determination or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial.

SEC. 1018. In pleading a private statute, or right derived therefrom, it is sufficient to refer to the statute, by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

SEC. 1019. An indictment for libel need not set forth any intrinsic facts, for the purpose of showing the application to the party libelled, of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial.

SEC. 1020. When an instrument which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument is immaterial.

SEC. 1021. In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court, or before whom, the oath alleged to be false, was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

Sec. 1022. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Sec. 1023. In an indictment for larceny or embezzlement of money, bank notes, certificates of stock or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement or the conspiracy to cheat and defraud to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination or kind thereof.

Sec. 1024. An indictment for exhibiting, publishing, passing, selling, or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

Sec. 1025. In prosecutions, under the provisions of sections 833, 839 and 916, where the owner of the property is unknown, the ownership of such property, shall for the purpose of this code be deemed and held to be in the territory of Washington, and in all cases where the indictment alleges the territory to be the owner of such property and the proof on the trial discloses the name of the actual owner, it shall not be deemed a variance, or failure of proof unless the defendant is the actual owner.

## CHAPTER LXXXIII.

### OF PROCEEDINGS BEFORE TRIAL.

Section
1026. Warrant of arrest, how issued.
1027. Criminal process, to whom issued and how executed.
1028. Bail. amount of, how fixed.
1029. Bail, on writs of attachment, returnable after term.
1030. Officer must inform prisoner of his authority.
1031. If defendant flee or resist.
1032. If person arrested escape.
1033. Recognizance, how may be taken.
1034. Officers may take recognizances.
Section
1035. Peace officers must certify recognizance to clerk.
1036 Defendant may deposit instead of bail.
1037. If defendant fail to appear. bail is forfeited.
1038. Party charged with capital crime, entitled to copy of indictment, list of petit jurors; process for witnesses
1039. Every person indicted for felony entitled to copy of indictment.
1040 to 1043 Compromising offenses, when and how.

Sec. 1026. When an indictment is found. the court may direct the clerk to issue a warrant, returnable forthwith; if no order is made, the clerk must issue a warrant upon all indictments within ten days after the close of the term.

Sec. 1027. All criminal process issuing out of the district court shall be directed to the sheriff of the county in which it is to be served, and be by him executed according to law. When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county, to execute the same: *Provided*, That final process shall in no case be executed by any other person than the legally authorized officer, or in case he is disqualified, some suitable person appointed by the court or judge thereof out of which the process issues, who shall make such appointment in writing, and before such appointment shall take effect, the person so appointed shall give surety to the party interested, for the faithful performance of his duties, which bonds of suretyship shall be in writing and approved by the court or judge making the appointment, and be placed on file with the papers in the case.

Sec. 1028. The court at each term must order the amount in which persons charged by indictment are to be held to bail, and the clerk must endorse the amount on the warrant. If no order fixing the amount of bail has been made the sheriff may present the warrant to the judge of the district court, and such judge must thereon indorse the amount of bail to be required; or if there is no such judge in the county the clerk may fix the amount of bail.

Sec. 1029. When writs of attachment are returnable after the close of the term, the court must direct the amount of bail to be required of the defendant.

Sec. 1030. The officer must inform the defendant that he acts under authority of a warrant, and must also show the warrant if required.

Sec. 1031. If after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Sec. 1032. If a person arrested escape or be rescued, the person from whose custody he made his escape, or was rescued, may immediately pursue and retake him at any time, and within any place in the territory. To retake the person escaping or rescued, the person pursuing has the same power to command assistance as given in cases of arrest.

Sec. 1033. Recognizances in criminal proceedings may be taken in open court and entered on the order book.

Sec. 1034. Any officer authorized to execute a warrant in a criminal action, may take the recognizance and justify and approve the bail; he may administer an oath and examine the bail as to its sufficiency.

Sec. 1035. Every recognizance taken by any peace officer must be certified by him forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and, from the time of filing, it has the same effect as if taken in open court.

Sec. 1036. The defendant may, in the place of giving bail, deposit with the clerk of the court to which he is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody.

Sec. 1037. If without sufficient excuse the defendant neglect to appear for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, according to the condition of his recognizance, the court must direct the default to be entered upon its minutes and the recognizance of bail, or money deposited as bail, as the case may be, is thereupon forfeited.

Sec. 1038. As soon as may be after the finding of an indictment for a capital crime, the party charged shall be served with a copy thereof by the sheriff or his deputy, at least twenty-four hours before trial, and shall, on demand upon the clerk, by himself or counsel, have a list of the petit jurors returned, delivered to him at least twenty-four hours before trial, and shall also have process to summon such witnesses as are necessary to his defense, at the expense of the county.

Sec. 1039. Every person indicted for an offense for which he may be imprisoned in the penitentiary, if he be under recognizance, or in custody to answer for such offense, he or his attorney shall be furnished with a copy of the indictment, and of all endorsements thereof without paying any fees therefor.

Sec. 1040. When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it was committed:

1. By or upon an officer while in the execution of the duties of his office.
2. Riotously; or,
3. With an intent to commit a felony.

Sec. 1041. If the party injured in such a case appear before the court to which the papers on a preliminary examination are required to be returned, at any time before trial, on an indictment for the offense, or the trial of an appeal in the district court, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom. But in that case the reasons for the order must be set forth therein, and entered upon the minutes.

Sec. 1042. The order authorized by the last section is a bar to another prosecution for the same offense.

Sec. 1043. No offense can be compromised, nor can any proceedings for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in this chapter.

## CHAPTER LXXXIV.

### OF THE DOCKET.

Section
1044. The clerk shall enumerate and classify the indictments.

Sec. 1044. The clerk shall, in preparing the docket of criminal cases, enumerate the indictments pending, to be tried at the term according to the date of their filing, and specifying opposite to the title of each action, whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail, and shall, in like manner, enter therein all indictments found during the term, and on which issues of fact are joined, all cases sent to the court on change of venue, and all cases sent to the court by a magistrate on appeal or otherwise.

## CHAPTER LXXXV.

### OF THE ARRAIGNMENT OF THE DEFENDANT AND OF WITNESSES AND EVIDENCE.

Section
1045. Motion to set aside indictment, demurrer or plea.
1046. Grounds of motion to set aside.
1047. Motion not allowed in certain cases.
1048. If motion denied.
1049. If case re-submitted. defendant remain in custody.
1050. An order to set aside, shall be no bar to future prosecution.
1051. Grounds of demurrer.
1052. If demurrer is sustained, when defendant must be discharged.
1053. If demurrer overruled, defendant may plead.
1053. If defendant fails to plead, judgment may be rendered on demurrer.
1054. Pleas to the indictment.
1055. Forms of pleas.
1056. Plea of guilty must be by defendant personally.
Section
1057. Plea of guilty may be withdrawn any time before judgment.
1058. Plea of not guilty, denial of every material allegation.
1059. A conviction or acquittal upon a verdict, shall bar another prosecution.
1060. Judgment on demurrer, shall not bar another prosecution.
1061. If defendant refuse to answer plea of not guilty
1062. If defendant plead guilty, procedure.
1063. When court may assign counsel.
1064. Defendant shall answer as to his true name.
1065. If indicted by improper name his true name shall be substituted.
1066. For misdemeanor defendant may appear by counsel.
1067. Attendance, how procured

SECTION
1068. Clerk to issue subpœna when warrant issues.
1069. Competent in civil actions, competent in criminal.
SECTION
1070. Confession of defendant; when may be used.
1071. Rule in civil actions, shall govern.

SEC. 1045. In answer to the arraignment, the defendant may move to set aside the indictment, or he may demur or plead to it, and is entitled to one day after arraignment in which to answer thereto if he demand it.

SEC. 1046. The motion to set aside the indictment can be made by the defendant on one or more of the following grounds, and must be sustained.

1. When it is not endorsed "a true bill." and the endorsement signed by the foreman of the grand jury as prescribed by this code.

2. When the names of all the witnesses examined before the grand jury are not endorsed thereon.

3. When it has not been presented and marked "filed" as prescribed by this code;

4. When any person, other than the grand jurors, was present before the grand jury when the question was taken upon the finding of the indictment, or when any person, other than the grand jurors, was present before the grand jury during the investigation of the charge, except as required or permitted by law.

5. That the grand jury were not selected, drawn, summoned, empaneled, or sworn as prescribed by law.

SEC. 1047. The ground of the motion to set aside the indictment mentioned in the fifth subdivision of the preceding section is not allowed to a defendant who has been held to answer before indictment.

SEC. 1048. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

SEC. 1049. If the court direct that the case be re-submitted, the defendant, if already in custody, must so remain unless he be admitted to bail; or, if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment.

SEC. 1050. An order to set aside the indictment as provided in this chapter, shall be no bar to a future prosecution for the same offense.

SEC. 1051. The defendant may demur to the indictment when it appears upon its face either:

1. That it does not substantially conform to the requirements of this code.

2. That the indictment contains any matter which, if true, would constitute a legal defense or bar to the prosecution.

SEC. 1052. If the demurrer is sustained because the indictment contains matter which is a legal defense or bar to the indictment, the judgment shall be final, and the defendant must be discharged.

SEC. 1053. If the demurrer is overruled the defendant has a right to put in a plea. If he fails to do so, judgment may be rendered against him on the demurrer, and, if necessary, a jury may be impaneled to inquire and ascertain the decree of the offense.

SEC. 1054. There are but three pleas to the indictment. A plea of:

1. Guilty.

2. Not guilty.

3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded with or without the plea of not guilty.

Sec. 1055. The plea may be entered on the record, substantially, in the following form:

1. A plea of guilty. "The defendant pleads that he is guilty of the offense charged in the indictment."

2. A plea of not guilty. "The defendant pleads that he is not guilty of the offense charged in the indictment."

3. A plea of former conviction or acquittal. "The defendant pleads that he has formerly been convicted or acquitted (as the case may be,) of the offense charged in the indictment, by the judgment of the court of ———(naming it,) rendered on the——day of——— A. D., 18—, (naming the time.)"

Sec. 1056. The plea of guilty can only be put in by the defendant himself in open court.

Sec. 1057. At any time before judgment, the court may permit the plea of guilty to be withdrawn, and other plea or pleas substituted.

Sec. 1058. The plea of not guilty is a denial of every material allegation in the indictment; and all matters of fact may be given in evidence under it, except a former conviction or acquittal.

Sec. 1059. A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in the indictment on which the conviction or acquittal took place.

Sec. 1060. The judgment for the defendant on a demurrer, except where it is otherwise provided, or for an objection to its form or substance taken on the trial, or for variance between the indictment and the proof, shall not bar another prosecution for the same offense.

Sec. 1061. If the defendant fail or refuse to answer the indictment by demurrer or plea, a plea of not guilty must be entered by the court.

Sec. 1062. If, on the arraignment of any person, he shall plead guilty, if the offense charged be not murder, the court shall, in their discretion, hear testimony, and determine the amount and kind of punishment to be inflicted; but if the defendant plead guilty to a charge of murder, a jury shall be empanneled to hear testimony, and determine the degree of murder and the punishment therefor.

Sec. 1063. If the defendant appear without counsel, he shall be informed by the conrt that it is his right to have counsel before being arraigned, and he shall be asked if he desire the aid of counsel, and if it appear that he is unable to employ counsel by reason of poverty, counsel shall be assigned to him by the court.

Sec. 1064. When the defendant is arraigned, he shall be interrogated, if the name by which he is indicted be not his true name; he shall then declare his true name, or be proceeded against by the name in the indictment.

Sec. 1065. If he allege that another name is his true name, it must be entered in the minutes of the court, and the subsequent proceedings on the indictment may be had against him by that name, referring also, to the name by which he is indicted.

Sec. 1066. If the indictment be [for] a misdemeanor, punishable by fine only, the defendant may appear upon arraignment by counsel.

Sec. 1067. Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the territory, or of the defendant in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpœnaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may recognize witnesses, with or without sureties, to attend and testify at the same or the next term of the court, or at the term of a court within the territory, and any person accused of any crime in this territory by indictment or otherwise, may in the examination or trial of the cause, offer himself or herself as a witness in his or her own behalf, and shall be allowed to testify as other witnesses in such case, and when such accused shall so testify he or she shall be subject to all the rules of law relating to cross examinations of other witnesses: *Provided*, That nothing in this act shall be construed to compel such accused persons to offer himself or herself as a witness in such case: *And provided further*, That it shall be the duty of the court to instruct the jury, that no inference of guilt shall arise against the accused if the accused shall fail or refuse to testify as a witness in his or her own behalf.

SEC. 1068. The clerk shall, at the time of issuing a warrant for the defendant, issue a subpœna for all the witnessess whose names are endorsed on the indictment, and any others required; but in no case shall a continuance be granted to the territory on account of the absence of any witness whose name is not endorsed on the indictment.

SEC. 1069. Witnesses competent to testify in civil cases shall be competent in criminal prosecutions, but regular physicians or surgeons, clergymen or priests, shall be protected from testifying as to confessions, or information received from any defendant, by virtue of their profession and character; Indians shall be competent witnesses as hereinbefore provided, or in any prosecutions in which an Indian may be a defendant.

SEC. 1070. The confession of a defendant made under inducement, with all the circumstances, may be given as evidence against him, except when made under the influence of fear produced by threats; but a confession made under inducement is not sufficient to warrant a conviction without corroborating testimony.

SEC. 1071. The rules of evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions.

## CHAPTER LXXXVI.

### VENUE.

SECTION
1072. Grounds for.
1073. Duty of court, and clerk, when granted.
1074. When prejudice of inhabitants is alleged.

SECTION
1075. Where parties agree, court may change place of trial.
1076. When ordered, witnesses to recognize.

SEC. 1072. The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial, which must be supported by other satisfactory proof, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county, or some part thereof, and demand to be tried by disinterested triers.

SEC. 1073. When the affidavit is founded on prejudice of the judge, the court may, in its discretion, grant a change of venue to some county in another district, or may continue the cause to the next term of the court, which may be held by any other district judge; if the affidavit is founded upon excitement or prejudice in the county or district against the defendant, the court may, in its discretion, grant a change of venue to the most convenient county or district. The clerk must thereupon make a transcript of the proceedings and order of court, and having sealed up the same with the original papers, deliver them to the sheriff, who must without delay deposit them in the clerk's office of the proper county, and make his return accordingly.

Sec. 1074. No change of venue from the district shall be allowed on account of the prejudice of the inhabitants of any particular county, but where a party or his attorney shall make his affidavit, and prove to the satisfaction of the court, or judge, that the inhabitants of any particular county are so prejudiced or excited, or so particularly interested in the cause or question, that he believes the party cannot have justice done by a jury of that county, then no juror for that particular case shall be taken from that county, unless by consent of the party making the objection, but the case shall be tried by the jurors from the other counties who may be in attendance as grand and petit jurors, and if, from challenges or any other cause, there shall not remain twelve competent jurors, then the case may be tried by a number less than twelve: *Provided*, That the defendant and prosecuting attorney consent to so try the case.

Sec. 1075. The court may at its discretion at any time order a change of venue or place of trial to any county or district in the territory, upon the written consent or agreement of the prosecuting attorney and the defendant.

Sec. 1076. When a change of venue is ordered, if the offense be bailable, the court shall recognize the defendant, and, in all cases, the witnesses to appear at the term of the court to which the change of venue was granted.

## CHAPTER LXXXVII.

### OF TRIALS.

Section
1077. Continuance; grounds for.
1078. Issues of fact tried by jury.
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1080. Challenges by prosecution.
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1082. Challenges for cause.
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1085. May be submitted to court, except in capital cases.
1086. No person shall be prosecuted for felony unless personally present.
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1088. Court decides all questions of law.
1089. Juries not allowed to separate except by consent.
1090. The court may order a view.
1091. Defendants indicted jointly may be tried separately.
1092. Any one of joint defendants may be discharged when.

Section
1093. When improper offense charged, defendant shall answer offense shown.
1094. In prosecution in improper county, court may change venue.
1095. Juries in cases in two preceding sections discharged without prejudice.
1096. Conviction or acquittal of an offense embracing several degrees, shall be a bar to prosecution for an offense included in the former.
1097-8. When an indictment consists of several degrees, jury may convict of a lesser one.
1099. When jury disagree on a joint indictment, they may find as to those regarding whom they can agree.
1100. If jury mistake the law, the court may direct them to reconsider.
1101. When defendant is acquitted on grounds of insanity.
1102. Return of verdict; proceeding.
1193. Court to affix penalty.
1103. Form of verdict.
1104. Court must render judgment.

Sec. 1077. A continuance may be granted in any case on the ground of the absence of evidence on the motion of the defendant supported by affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it; and also the name and place of residence of the witness or witnesses; and the substance of the evidence expected to be obtained, and if the prosecuting attorney admit that such evidence would be given, and that it be considered as actually given on the trial or offered and overruled as improper the continuance shall not be granted.

SEC. 1078. Issues of fact joined upon an indictment shall be tried by a jury of twelve persons, and the law relating to the drawing, retaining and selecting jurors, and trials by jury in civil cases, shall apply to criminal cases.

SEC. 1079. In prosecution for capital offenses, the defendant may challenge peremptorily twelve jurors; in prosecution for offenses punishable by imprisonment in the penitentiary, six jurors; in all other prosecutions, three jurors. When several defendants are on trial together, they must join in their challenges.

SEC. 1080. The prosecuting attorney, in capital cases, may challenge peremptorily six jurors; in all other cases, three jurors.

SEC. 1081. Challenges to the panel shall only be allowed for a material departure from the forms prescribed by law, for the drawing and return of the jury, and shall be in writing, sworn to and proved to the satisfaction of the court.

SEC. 1082. Challenges for cause shall be allowed for such cause as the court may, in its discretion, deem sufficient, having reference to the causes of challenge prescribed in civil cases, as far as they may be applicable, and to the substantial rights of the defendant.

SEC. 1083. No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death, shall be compelled or allowed to serve as a juror on the trial of any indictment for such an offense.

SEC. 1084. The jury shall be sworn or affirmed to well and truly try the issue between the territory and the defendant, according to the evidence; and, in capital cases, to well and truly try, and true deliverance make between the territory and the prisoner at the bar, whom they shall have in charge, according to the evidence.

SEC. 1085. The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court, except in capital cases.

SEC. 1086. No person prosecuted for an offense punishable by death, or by confinement in the penitentary or in the county jail, shall be tried unless personally present during the trial.

SEC. 1087. No person prosecuted for an offense punishable by a fine only, shall be tried without being personally present, unless some responsible person, approved by the court, undertakes to be bail for stay of execution and payment of the fine and costs that may be assessed against the defendant. Such undertaking must be in writing, and is as effective as if entered into after judgment.

SEC. 1088. The court shall decide all questions of law which shall arise in the course of the trial. The same laws in relation to giving instructions to the jury by the court, and the argument of counsel and taking exceptions, as is now provided in the civil practice act, shall also govern in criminal cases, except as herein specially provided.

SEC. 1089. Juries in criminal cases shall not be allowed to separate, except by consent of the defendant and the prosecuting attorney, but shall be kept together, without meat or drink, unless otherwise ordered by the court, to be furnished at the expense of the county.

Sec. 1090. The court may order a view by any jury impanneled to try a criminal case.

Sec. 1091. When two or more defendants are indicted jointly, any defendant requiring it shall be tried separately.

Sec. 1092. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defense, direct any defendant to be discharged, that he may be a witness for the territory. A defendant may also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a co-defendant. The order of discharge is a bar to another prosecution for the same offense.

Sec. 1093. When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant shall not be discharged if there appear to be good cause to detain him in custody; but the court must recognize him to answer the offense shown, and if necessary, recognize the witnesses to appear and testify.

Sec. 1094. When it appears at any time before verdict or judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment to be corrected, and direct that all the papers and proceedings be certified to the proper court of the [proper] county, and recognize the defendant and witnesses to appear at such court on the first day of the next term thereof, and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced.

Sec. 1095. When a jury has been empanneled in either case contemplated in the two last preceding sections, such jury may be discharged without prejudice to the prosecution.

Sec. 1096. When the defendant has been convicted or acquitted upon an indictment for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein.

Sec. 1097. Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offense.

Sec. 1098. In all other cases, the defendant may be found guilty of an offense, the commission of which is necessarily included within that with which he is charged in the indictment.

Sec. 1099. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly.

Sec. 1100. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to re-consider the verdict; and if after such re-consideration they return the same verdict, it must be entered, but it shall be good cause for new trial; but where there is a verdict of acquittal, the court cannot require the jury to re-consider it.

Sec. 1101. When any person indicted for an offense shall, on trial, be acquitted by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge, or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged.

SEC. 1102. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all appear, their verdict must be rendered in open court; and if all do not appear, the rest must be discharged without giving a verdict, and the cause must be tried again at the same or next term.

SEC. 1103. When the defendant is found guilty, the court, and not the jury, shall fix the amount of fine and the punishment to be inflicted. The verdict of the jury may be substantially in the following form:

"We, the jury, in the case of the territory of Washington, plaintiff, against ——, defendant, find the defendant (guilty or not guilty, as the case may be.) (Signed,) A B, foreman."

SEC. 1104. When the defendant is found guilty, the court shall render judgment accordingly, and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise.

## CHAPTER LXXXVIII.

### OF NEW TRIALS AND ARREST OF JUDGMENT.

SECTION
1105. Application must be made before judgment.
1105. Causes for which may be granted.
1106. In certain cases affidavit required.
1107. Arrest of judgment; ground for motion.
SECTION
1108. Court may arrest judgment without motion.
1109. Defendant may be recommitted or admitted to bail.
1110. Exceptions may be taken as in civil cases.

SEC. 1105. An application for a new trial must be made before judgment, and may be granted for the following causes:

1. When the jury has received any evidence, paper, document or book not allowed by the court, to the prejudice of the substantial rights of the defendant.

2. Misconduct of the jury.

3. For newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial.

4. Accident or surprise.

5. Admission of illegal testimony and misdirection of the jury by the court, in a material matter of law, excepted to at the time.

6. When the verdict is contrary to law and evidence; but not more than two new trials shall be granted for these causes alone.

SEC. 1106. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the preceding section, the facts on which it is based shall be set out in an affidavit.

SEC. 1107. Judgment may be arrested on the motion of the defendant for the following causes:

1. No legal authority in the grand jury to inquire into the offense charged, by reason of its not being within the jurisdiction of the court.

2. That the facts as stated in the indictment do not constitute a crime or misdemeanor.

Sec. 1108. The court may also, on its view of any of these defects, arrest the judgment without motion.

Sec. 1109. When judgment is arrested in any case, and there is reasonable ground to believe that the defendant can be convicted of an offense, properly charged, the court may order the defendant to be re-committed, or admitted to bail anew, to answer a new indictment.

Sec. 1110. Exceptions may be taken by the defendant, as in civil cases, on any matter of law by which his substantial rights are prejudiced.

## CHAPTER LXXXIX.

### JUDGMENTS, FINES AND EXECUTIONS.

Section
1111. For fines, liens upon defendant's real estate.
1112. Defendant may have stay of execution.
1113. To be paid to county treasurer.
1114. When court must pronounce judgment.
1115. Of imprisonment, defendant must be present.
1115. For fine some responsible person may undertake.
1116. If defendant not present, court may issue warrant
1117. When defendant appears for judgment, court must inform him of verdict.
1118. If defendant do not appear for judgment, court may issue bench warrant.
1119. Defendant may be committed until fines and costs are paid.
1120. Execution against property for fine and costs.
1121. Defendants may also be recognized to keep the peace.
1122. Proceedings in breach of recognizance.

Section
1123. Stay of execution for sixty days.
1124. Sureties to be approved by clerk.
1125. In case of failure to pay fines and costs, defendant may be ordered into custody.
1126. Clerk shall deliver to sheriff transcript of conviction and sentence.
1127. Form of sentence of imprisonment.
1128. If there is no penitentiary in the territory.
1129. Defendant committed, must work out fine.
1130. Requisites of warrants in case of death.
1131. Punishment of death must be by hanging.
1132. Sheriff must return death warrant.
1133. Proceeding when time passed for execution.
1134. Clerk to make final record of proceedings in all criminal proceedings.
1135. Fines and forfeitures belong to counties from which defendant came.
1136. Governor may commute sentences, grant respites.

Sec. 1111. Judgments for fines in all criminal actions rendered, are, and may be made liens upon the real estate of the defendant in the same manner, and with like effect as judgments in civil actions.

Sec. 1112. The defendant may have a stay of execution for the same length of time, and in the same manner, as provided by law in civil actions, and with like effect, and the same proceedings may be had therein.

Sec. 1113. All fines imposed on any person by the provisions of this code, where the same shall be collected, shall be paid to the county treasurer of the county where such conviction shall have been had, to go into the general county fund. The county treasurer shall give duplicate receipts therefor, one of which shall be filed with the county auditor; and all officers refusing or neglecting to pay over any fines within one month after they shall have been received, shall, upon conviction thereof, be fined in four fold the amount of such fines so received.

Sec. 1114. After verdict of guilty, or finding of the court against the defendant, if the judgment be not arrested, or a new trial granted, the court must pronounce judgment.

Sec. 1115. For the purpose of judgment, if the conviction be for an offense punishable by imprisonment, the defendant must be personally present; if for a fine only, he must be personally present, or some responsible person must undertake for him to secure the payment of the judgment and costs; judgment may then be rendered in his absence.

Sec. 1116. If in any case the defendant is not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served in any county in this territory, as a warrant of arrest in other cases.

SEC. 1117. When the defendant appears for judgment, he must be informed by the court of the verdict of the jury, and asked whether he have any legal cause to show why judgment should not be pronounced against him.

SEC. 1118. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

SEC. 1119. When the defendant is adjudged to pay a fine and costs, the court shall order him to be committed to the custody of the sheriff until the fine and costs are paid or secured as provided by law.

SEC. 1120. Upon a judgment for fine and costs, and for all adjudged costs, execution shall be issued against the property of the defendant, and returned in the same manner as in civil actions.

SEC. 1121. Every court before whom any person shall be convicted upon an indictment for an offense not punishable with death or imprisonment in the penitentiary may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum, to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he shall so recognize.

SEC. 1122. In case of the breach of the conditions of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace.

SEC. 1123. Every defendant against whom a judgment has been rendered for fine and costs, may stay the execution of for the fine assessed and costs for sixty days from the rendition of the judgment, by procuring one or more sufficient sureties, to enter into a recognizance in open court, acknowledging themselves to be bail for such fine and costs.

SEC. 1124. Such sureties shall be approved by the clerk, and the entry of the recognizance shall be written immediately following the judgment, and signed by the bail, and shall have the same effect as a judgment, and if the fine or costs be not paid at the expiration of the sixty days, a joint execution shall issue against the defendant and the bail, and an execution against the body of the defendant, who shall be committed to jail, to be released as provided in this act, in committal for default to pay or secure the fine and costs.

SEC. 1125. If any person, ordered into custody until the fine and costs adjudged against him, [be paid] shall not before the final adjournment of the court, pay or cause the payment of the same to be secured, the clerk of the court shall issue a warrant to the sheriff, commanding him to imprison such defendant in the county jail until such fine and costs are paid or secured until he has been imprisoned in such jail one day for every three dollars of such fine or costs, but execution may at any time issue against the property of the defendant, as in other cases. [See Sec. 1129, infra.]

SEC. 1126. When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence, who shall execute it accordingly.

Sec. 1127. In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at any one time; and in the execution of such punishment the solitary shall precede the punishment by hard labor, unless the court shall otherwise order.

Sec. 1128. If there shall be no penitentiary within the territory, or other prisons, the court may order the prisoner to be imprisoned in any county jail, if there be one, or any other place of confinement within the territory, at the expense of the territory; and if there is no county jail or county prison the court may order the defendant sentenced to the county jail, to be confined in the penitentiary, if there be one, or in any county jail, or other place of confinement in the territory, at the expense of the county in which the conviction was had.

Sec. 1129. When a defendant is committed to jail on failure to pay any fine or costs he shall under the order of the county commissioners work out the amount of the fine and costs at the rate of three dollars per day; and in case he shall so work out the fine and costs or in case he shall not be able to work, or the county commissioners fail to provide work, and he shall have been confined in the county jail one day for every three dollars of such fine and costs no execution shall issue therefor. When any defendant is in the custody of the sheriff by virtue of a sentence of imprisonment in the county jail, and there be no county jail in the county, he shall, under the order of the county commissioners, cause such person to work his unexpired term of imprisonment in such manner as said county commissioners may direct.

Sec. 1130. When judgment of death is rendered, a warrant signed by the judge and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment, and appoint a day in which the judgment shall be executed, which shall not be less than thirty nor more than ninety days from the time of judgment. And the sheriff or officer to whom said warrant was delivered shall return the same within twenty days after the time fixed for the execution.

Sec. 1131. The punishment of death prescribed by law must be inflicted by hanging by the neck.

Sec. 1132. The sheriff shall return and file with the clerk the warrant, with a statement of his doings thereon, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

Sec. 1133. Whenever the time appointed for the execution of a prisoner shall have passed, from any cause, the court by whom the time was fixed, or the judge or judges thereof, shall cause the prisoner to be brought immediately before the said court, judge or judges, and proceed to appoint a day for the carrying into effect of the sentence of death.

Sec. 1134. The clerk of the district court shall make a final record of all the proceedings in a criminal prosecution, within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment, journal entries, pleadings, minutes of challenges to panel of petit jurors, judgment, orders or decision, and bill of exceptions.

SEC. 1135. All fines and forfeitures shall belong to the counties from which the defendants come, to be applied to the same purposes as if the court was a district court of the county.

SEC. 1136. Whenever a prisoner has been sentenced to death, the governor shall have power to commute such sentence to imprisonment for life at hard labor; and in all cases in which the governor is authorized to grant pardons or commute sentence of death, he may, upon the petition of the person convicted, commute a sentence or grant a pardon, upon such conditions, and with such restrictions, and under such limitations as he may think proper; and he may issue his warrant to all proper officers to carry into effect such pardon or commutation, which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites, from time to time as he may think proper. [See sections 786–7 ante.]

## CHAPTER XC.

### ACTION ON FORFEITED RECOGNIZANCE.

SECTION
1137. When declared forfeited.
1138. Stay of execution on judgment.
SECTION
1139. When court may vacate judgment.

SEC. 1137. In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court, and at the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned, and execution may issue thereon the same as upon other judgments.

SEC. 1138. The parties, or either of them, against whom such judgment may be entered in the district or supreme courts, may stay said execution till the next regular term of the court in which such judgment is entered, by giving a bond with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment after the adjournment of such succeeding term of court, unless the same shall be vacated before the end of such term.

SEC. 1139. If a bond be given and execution stayed, as provided in the preceding section, and the principal shall be produced at such term of court, the judge may vacate such judgment upon such terms as may be just and equitable, otherwise execution shall forthwith issue as well against the sureties in the new bond as against the judgment debtors.

## CHAPTER XCI.

### OF WRITS OF ERROR AND APPEALS.

SECTION
1140. Final judgments may be re-examined.
1141. Appeals; how taken.
1142. Writs of error; how taken.
1143. Defendant entitled to transcript of record.
1144. Transcript, what shall contain.
1145. Transcript, when shall be filed.
1146. Supreme court may reverse, affirm or modify judgment.
1147. Shall examine all errors assigned.
SECTION
1148. May operate to stay proceedings in capital cases.
1149. In felonies, a supersedeas; but no bail allowed.
1150. In misdemeanors, bail may be fixed by trial judge.
1151. When and where shall be docketed.
1152. Personal appearance of defendant not necessary.

SECTION
1153. Defendants tried jointly, anyone may appeal.
1154. In case of reversal or affirmation.
1155. Shall be dismissed for informality.
1156. Opinions of supreme court shall be in writing.
1157. Transcript from supreme court, authority.

SECTION
1158. If defendant again convicted, former confinement shall be deducted.
1159. Supreme court to make rules not inconsistent with this code.

SEC. 1140. Every final judgment, order or decision of a district court in a criminal prosecution, may be re-examined upon a writ of error, in the same court for error in fact, within one year, and in the supreme court for error in law, within two years. The writ may be sued out by the defendant for all errors, and by the prosecuting attorney when the error complained of is in quashing the indictment, or where a judgment is arrested by reason of the facts, as stated in the indictment, not constituting a crime or misdemeanor.

SEC. 1141. Appeals may be taken from any final judgment from which a writ of error would lie, by the defendant and prosecuting attorney, as provided in the preceding section, at the term of court at which the judgment was rendered.

SEC. 1142. Writs of error shall be sued out by the filing of a precipe therefor, signed by the plaintiff in error or his attorney, with the clerk of the supreme court and shall be issued by said clerk under seal of the supreme court and be sent by said clerk by mail or by a messenger who shall be a person not a party to, or interested in the case, to the clerk of the district court, and notice of the taking of such writ shall be issued by the clerk of the district court within three days after he receives the writ, and shall be served upon the prosecuting attorney of the district, or defendant, or his attorney in the same manner as notice in a civil action; and within ten days after the writ is received by the clerk of the district court the plaintiff in error shall file with the clerk of the district court an assignment of errors specifically pointing out each error complained of.

SEC. 1143. The defendant, on appeal or writ of error, shall be entitled to a transcript of the record, on payment of the fee therefor, and the transcript shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment, journal entries, pleadings, minutes of challenge to panel of petit jurors, judgment, order, decision and bill of exceptions, certified to by the clerk.

SEC. 1144. The transcript, when the writ of error is sued out, or the appeal taken by the prosecuting attorney, shall contain a copy of the indictment, and the order, decision, or judgment of the court from which the appeal is taken, or on which error is to be assigned.

SEC. 1145. If the transcript shall not be filed within sixty days, the appeal or writ of error shall be dismissed, unless it shall appear that the plaintiff in error, or appellant, was not in fault; and the court may order a new transcript or further record to be certified to at any time.

SEC. 1146. The supreme court may reverse, affirm or modify the judgment appealed from, or may, if necessary or proper, order a new trial.— In either case, the cause must be remanded to the court below, with proper instructions, together with the opinion of the court. But whenever any judgment is affirmed, the court may order it to be enforced by the proper officer.

SEC. 1147. On hearing of writs of error, the supreme court shall examine all errors assigned, and on the hearing of appeals shall examine all errors and mistakes excepted to at the time, whether waived by the strict rules of law or not; but the court shall consider all amendments which could have been made, as made, and shall give judgment without regard to technical errors or defects, or exceptions which do not affect the substantial rights of the defendant.

SEC. 1148. A writ of error or appeal may operate to stay proceedings in a capital case, on the allowance by a judge of the supreme court, and after sufficient notice to the prosecuting attorney of the time and place of making the application; and such order, certified to by the clerk of the district court of any county, under the seal thereof, when served on the sheriff, shall stay further proceedings in the case.

SEC. 1149. In any case in which a party is convicted of a felony, and an appeal is taken or a writ of error obtained in behalf of said party, such appeal or writ of error shall operate as a supersedeas in so far as to stay the execution of the sentence, if the same is to be enforced by imprisonment in the penitentiary; but in no case shall a party convicted of felony be allowed the benefit of bail, but such a party shall be confined in some county jail, or some other place of imprisonment.

SEC. 1150. When an appeal or writ of error is taken by the defendant convicted of a misdemeanor, bail may be fixed by the trial judge, and when given by the defendant, it is the duty of the clerk to give forthwith to said defendant, his agent or attorney, a certificate under his hand and the seal of the court, stating that an appeal or writ of error has been taken and bail entered, and the sheriff or other officer having the defendant in custody, must, upon the delivery of such certificate to him, discharge the defendant from custody where imprisonment forms any part of the judgment, and cease all further proceedings in execution of the judgment, and return forthwith to the clerk of the court who issued it, the execution or certified copy of the entry of judgment under which he acted, with his return thereon, if such execution or certified copy has been issued, and if such execution or certified copy has not been issued, it shall not be issued, but shall await the judgment of the supreme court.

SEC. 1151. Appeals or writs of error in criminal cases shall be docketed in the supreme court for trial at the commencement of that portion of the term which has been assigned for trying cases from the judicial district from which the appeal or suit in error comes. They shall take precedence of all other business, and shall be tried at the term at which the transcript is filed, unless continued for cause, or by consent of the parties, and shall be decided, if practicable, at the same term.

SEC. 1152. The personal appearance of the defendant in the supreme court on trial of an appeal or suit in error, is in no case necessary. The defendant in all appeals and suits of error shall be entitled to close the argument.

SEC. 1153. When several defendants are tried jointly, any one or more of them may take an appeal, or sue out a writ of error.

SEC. 1154. When a judgment against the defendant is reserved, and it appears that no offense whatever has been committed, the supreme court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense, although defectively charged in the indictment, the supreme court, if the defendant is imprisoned, must direct the keeper of the place of confinement to cause the prisoner to be returned to the sheriff of the proper county, there to abide the order of the district court thereof; and such keeper shall be entitled to the usual fees therefor.

Sec. 1155. No appeal or writ of error shall be dismissed for any informality or defect in taking or suing out the same, if such informality or defect shall be corrected in a reasonable time.

Sec. 1156. All opinions of the supreme court in criminal prosecutions, must be given in writing and recorded in the order book.

Sec. 1157. A transcript of any order or judgment, or both, of the supreme court, certified under the seal of the court, shall be sufficient authority to any court, or to any officer on whom it may be served to proceed according to its mandate.

Sec. 1158. If a defendant, who has been imprisoned during the pending of an appeal or suit in error, upon a new trial, ordered by the supreme court, shall be again convicted, the period of his former imprisonment shall be deducted by the district court from the period of imprisonment to be fixed on the last verdict of conviction.

Sec. 1159. The supreme court shall have power to make any rules not inconsistent with the provisions of this code.

## CHAPTER XCII.

### ATTEMPTS.

Section

1160. May be convicted of an attempt although crime committed.
1161. Punishment for attempts when no crime is committed.
1162. Crime, commission of, different from that intended.

Sec. 1160. Any person may be convicted of an attempt to commit a crime, although it appear on the trial that the crime intended or attempted, was perpetrated by such person, in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime.

Sec. 1161. Every person who attempts to commit any crime, but fails, or is prevented, or intercepted in the perpetration thereof, is punishable, when no provision is made by law for the punishment of such attempt, as follows:

1. If the offense so attempted is punishable by imprisonment in the penitentiary for five years, or more, or by imprisonment in the county jail, the person guilty of such attempt is punishable by imprisonment in the penitentiary, or in the county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction of the offense so attempted.

2. If the offense so attempted is punishable by imprisonment in the penitentiary for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one year.

3. If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted is punishable by imprisonment and a fine, the offender convicted of such attempt, may be punished by both imprisonment and fine, not exceeding one-half the longest term of im-

prisonment, and one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

Sec. 1162. The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

## CHAPTER XCIII.

### MISCELLANEOUS PROVISIONS.

Section
1163. Persons in custody shall be a charge upon what county.
1164. Of jail where district court is held.
1164 One dollar per day will be charged.
1165. Who shall convey prisoners to and from counties.
1166. Clerk shall certify forfeited recognizances.
1166. Prosecuting attorney shall proceed against them.
1167. Action on recognizance, shall not be defeated, for failure to note default.
1168. Person acquitted or discharged not liable for costs.
1169. Bail to justify; how.
1170. Officer may break open doors when.
1171. Plea of benefit clergy abolished.

Sec. 1163. All persons in custody charged with the commission of crime within the jurisdiction of the district court, and all persons who may be placed in custody or committed to the district court, shall, in the first instance, be a charge upon the county where they belong, and in the custody of the sheriff of that county if he be in attendance upon the court; if he be not in attendance, then they shall be in charge of the sheriff of the county in which the court is held.

Sec. 1164. The jail of the county in which the district court is held shall be free to all prisoners coming from any county in the district, and in no instance shall more than one dollar a day be allowed for the custody and maintenance of a prisoner.

Sec. 1165. All prisoners whom it may be necessary to convey to the place where the district court is held, or to any place for an examination before the judge, if conveyed beyond the bounds of the county in which they are confined, shall be conveyed to and from their place of confinement by the sheriff of the county in which they are confined, or the sheriff of the county to which such prisoner belongs, at the expense, in the first instance, of the county to which such prisoner belongs; and such sheriff shall have a right to the custody of the prisoner within the limits of any county in this territory through which he may pass; and for the temporary confinement of his prisoner may use the county [jail of any county free of charge, except for board, which shall not exceed thirty cents a meal.]

Sec. 1166. All recognizances taken and forfeited before any justice of the peace or magistrate, shall be forthwith certified to the clerk of the district court of the county; and it shall be the duty of the prosecuting attorney to proceed at once by action against all the persons bound in such recognizances, and in all forfeited recognizances whatever, or such of them as he may elect to proceed against.

Sec. 1167. No action brought on any recognizance, given in any criminal proceeding whatever, shall be barred or defeated, nor shall judgment be arrested thereon by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court, or before what justice the party or witness was bound to appear; and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance; and a recognizance may be recorded after execution awarded.

Sec. 1168. No prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment is found against him, or for want of prosecution, shall be liable for any costs or fees of any officer or for any charge of subsistence while he was in custody, but in every such case the fees of the defendant's witnesses, and of the officers for services rendered at the request of the defendant; and charges for subsistence of the defendant while in custody shall be taxed and paid as other costs and charges in such cases.

Sec. 1169. Bail shall, when required, justify as in civil cases.

Sec. 1170. To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house or other building, or any other enclosure, if, after notice of his office and purpose, he be refused admittance.

Sec. 1171. The plea of the benefit of clergy is abolished.

## CHAPTER XCIV.

### MISCELLANEOUS ACTS.

Section
1172. Fish; protection of.
1174. Salmon fisheries; protection of on Puget sound and tributary waters
1179. Salmon fisheries on Columbia river and tributaries.
1186. Salmon; barrels and packages, how marked.
1187. Oysters; cultivation of.
1200. Game; the protection of.
1208. Buoys and beacons; the protection of.
1210. Houses of ill-fame
1214. Illegitimate children.

Section
1222 Seamen; enticing them to desert.
1224. Timber; destruction of by fire.
1230. Libel.
1235. Nuisance.
1253. Gambling.
1263. Fences; barbed wire.
1266. Sunday, observance of.
1271 Vagrancy.
1286. Measurement of charcoal.
1288. Fire hunting.
1290. Rewards for criminals.

### TO PROTECT FISH.

Sec. 1172. It shall be unlawful for any person or persons to use any seine, drag or gill net, or any other apparatus. during the months of March, April and May of each year, within the following limits, to wit: Commencing at the head of Port Madison Bay in section 4, township 25 north, range 2 east, following the northern shore of said bay to Agate Passage, thence following the shore line of Bainbridge Island, to Fletcher's Bay, in section 19, township 25 north, range 2 east; also the shore line of Dogfish Bay. Any person violating the provision of this section may be fined in any sum not exceeding one hundred dollars, by any court having jurisdiction of the offense.

Sec. 1173. Any person or persons who may build any dam of any kind, or place any obstruction of any kind for any purpose whatever, in any of the rivers in Washington Territory, frequented by salmon for the purpose of spawning, shall construct a suitable fish way by which said fish may reach the water above said dam, or obstruction; and it shall be unlawful for any person or persons to close any river of this territory by placing across the same any stakes, seines, drag or gill nets, which may prove an absolute bar to the passage of fish frequenting the same for the purpose of spawning. Any person violating the provisions of this section may be fined in any sum not exceeding five hundred dollars, to which may be added imprisonment in the county jail not exceeding one year.

## FOR THE PROTECTION OF THE SALMON FISHERIES OF PUGET SOUND AND TRIBUTARY WATERS.

[Approved November 9, 1877.]

SEC. 1174. For the purpose of more clearly defining the provisions of this title, all that portion of the tide waters emptying into the straits of Fuca and the bays and estuaries thereof, shall be known and designated in this code as Puget Sound.

SEC. 1175. All salmon caught, and cured by salting, for sale within the said waters of Puget Sound or any tributary thereof, shall be put up in packages marked with the name of "Puget Sound Salmon," in plain letters, at least two inches long, also, the place at which they are so cured and packed, and the name or names of the parties so curing them and offering them for sale. A violation of this section shall subject the offender to a fine of not less than ten, nor more than one hundred dollars for each and every offense, to be recoverable in any court having jurisdiction of misdemeanors.

SEC. 1176. All salmon caught within the waters hereinbefore named and prepared for sale, and export, by being hermetically sealed in cans made of tin or other metal, shall be labeled with labels bearing the words "Puget Sound Salmon," together with the name of the person engaged in the business of such preparation for export and sale by hermetically sealing in cans as aforesaid, together with the name of their place of business. The cans shall likewise be packed in cases in the manner prescribed by the second section of this chapter for packing salmon in barrels. A failure to comply with the provisons of this section shall be deemed a misdemeanor, and subject the offender to a fine of not less than ten dollars, nor more than one hundred dollars, for each and every offense recoverable in any court of competent jurisdiction.

SEC. 1177. The erection or construction of traps and weirs in any of the tributaries or estuaries of Puget Sound, for the purpose of catching salmon during any season of the year shall be deemed a misdemeanor and subject the offender to a fine of not less than two hundred nor more than five hundred dollars, in the discretion of the court: *Provided*, Traps or weirs may be put in rivers or streams if such traps or weirs are so constructed that they shall not extend to a greater distance across any stream than three-fourths of the width of such stream.

SEC. 1178. Any person exploding cartridges, of giant powder, hercules power, dynamite, nitroglycerine or other explosive matter, for the purpose of catching, killing, or destroying fish within the waters named in the foregoing section, or any tributary thereof, shall be deemed guilty of misdemeanor and fined not less than one hundred nor more than three hundred dollars.

## REGULATING SALMON FISHERIES ON THE COLUMBIA RIVER AND ITS TRIBUTARIES.

[Approved Nov. 14, 1879.]

SEC. 1179. It shall be unlawful to take, or fish for salmon in the Columbia river or its tributaries by any means whatever in any year hereafter during the months of March, August and September, or at the weekly close times in the months of April, May, June and July; that is to say, between the hours of six o'clock in the afternoon of each and every Saturday, until six o'clock of the afternoon of Sunday following; and any person or persons catching salmon in violation of the provisions of this section, or purchasing salmon so unlawfully caught, shall, upon conviction thereof, be fined in a sum of not less than five hundred dollars nor more than one thousand dollars, for the first offense, and for each and every subsequent offense, upon conviction thereof, shall be fined not less than one thousand dollars, to which may be added, at the discretion of the court, imprisonment in the county jail for a term not exceeding one year.

Sec. 1180. It shall not be lawful to fish for salmon in the Columbia river or its tributaries, during the said months of April, May, June and July, with gill-nets, the meshes of which are less than four and one-eighth inches square, nor with seines whose meshes are less than three inches square, nor with weir or fish traps whose slats are less than two and one-half inches apart. Nothing herein contained, shall prevent fishing in said river or its tributaries with dipnets during the fishing season, as established and defined by section 1179.

Sec. 1181. Every trap or weir shall have, in that part thereof where the fish are usually taken, an opening at least one foot wide extending upwards from the bottom toward the top of the weir or trap five feet, and the netting, slats and other material used to close such aperture while fishing, shall be taken out, carried upon shore, and there remain during the said months of March, August and September, and the weekly close time in the months of April, May, June and July, as prescribed in section one of this act, to the intent that, during said close time, the salmon may have free and unobstructed passage through such weir, trap, or other structure, and no contrivance shall be placed in any part of such structure which shall tend to hinder such fish. In case the enclosure, where the fish are taken, is furnished with a board floor, an opening extending from the floor five feet toward the top of the weir or trap shall be equivalent to extending the said opening from bottom to top. Any person or persons violating the provisions of this section or encouraging its violation, by knowingly purchasing salmon so unlawfully caught, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined, for the first offense, not less than five hundred dollars nor more than one thousand dollars, and for each subsequent offense shall, on conviction, be fined not less than one thousand dollars, to which may be added imprisonment in the county jail for a term not exceeding one year.

Sec. 1182. The person or persons making complaint of any violation of the provisions of this title, shall, upon conviction of the offender, be entitled to one-half the fine recovered, and any prosecuting attorney who shall, upon complaint being made to him of the violation of this title, fail to prosecute the party accused, shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, shall be fined in the sum of five hundred dollars for each and every offense.

Sec. 1183. This title shall not be so construed as to interfere in any way with the establishment or enterprise for the propagation of salmon, whether by the United States government or any regularly organized company or society for that purpose, located or operated upon said Columbia river or any of its tributaries.

SEC. 1184. It shall be unlawful for the proprietor of any saw mill, on the Columbia river or any of its tributaries, or any employe therein, to cast the saw dust made by such saw mill, or suffer or permit such saw dust to be thrown or discharged in any manner into said river or its tributaries below the Cascades of the Columbia river. For each and every willful violation of this section, the party guilty of such violation [shall be liable] to a fine of fifty dollars for each and every such offense, to be recovered before a justice of the peace of the proper county.

SEC. 1185. Any party convicted of any violation of the provisions of this title, shall be sentenced to pay the fine and costs adjudged, and in default of paying or securing the payment thereof, he shall be committed to the county jail until such fine and costs are paid or secured, until he shall have been imprisoned one day for every two dollars of such fine and costs; but execution may at any time issue against the property of the defendant for whatever sum may be due of such fine and costs. Upon payment of such fine or costs, or the balance after deducting the commutation by imprisonment or securing the same, the party shall be discharged.

SEC. 1186. All fines and penalties, collected for violation of this title, shall constitute a fund for the maintenance of hatching-houses for the propagation of salmon, and be disbursed in accordance with the provisions of an act entitled "an act to encourage the establishment of hatching-houses for the propagation of salmon in the waters of the Columbia river."

SEC. 1187. All fines and penalties hereby or herein imposed shall be enforced and collected as other fines and penalties; and jurisdiction to enforce such fines not herein given to the justices's court shall be vested in the district court of the proper county.

### BARRELS, PACKAGES OR CANS CONTAINING FISH TO BE MARKED.

[Act approved November 14, 1879.]

SEC. 1188. All barrels, packages or cans containing fish caught within this territory, and packed, barreled or canned therein, shall be marked by label or otherwise, in plain letters with the name of the place where said salmon were caught, and also the name of the territory, in full, and the name of the party or parties putting up the same, and for each package, barrel, part of a barrel or can not so marked, the person or persons, whose duty it is to mark the same, shall be subject to a penalty of not less than ten dollars, to be recovered by action brought by any person first informing in a court having jurisdiction; and one-half of the sum recovered, shall go into the common school fund of the county where the offense was committed, and the other half to the informer.

### TO ENCOURAGE THE CULTIVATION OF OYSTERS.

[Act approved Nov. 6, 1877.]

SEC. 1189. Any person being a citizen of this territory, who has planted, or who may hereafter plant oysters, in any bay or arm of the sea where there are no natural beds of oysters within or bordering upon this territory may acquire, by conforming to the requirements of this title, an exclusive right, for such a purpose, to that portion of such bay or arm of the sea as he shall so occupy, not exceeding, for any one person, an area of more than twenty acres: *Provided*, That no person or persons shall locate or cause to be located oyster-beds in any way interfering with the free use and privilege of any person or persons cutting timber or logging or conveying said logs to market.

SEC. 1190. The person desiring the benefits of the preceding section shall cause the place or portion he desires to claim to be marked, so far as is practicable, with stakes or other artificial marks at the corners, with bearings to adjacent natural objects, and shall make, before some officer qualified to administer oaths, an affidavit that he has taken the premises so described for the purpose of planting oysters, and that he has planted or is about to plant oysters thereon; that said premises are not upon and do not include any natural bed of oysters, and that the same are not occupied and claimed, in accordance with law, except by himself, and if said premises shall have heretofore been taken and oysters planted thereon, then within three months after the passage of this act, and if they shall hereafter be taken, then within one month after taking the same the person having so taken or taking the said premises shall cause his claim with a description thereof and affidavit as above required to be recorded by the county auditor of the county in which they may be situated.

SEC. 1191. The same person may claim and occupy more than one place: *Provided*, The premises so claimed by him do not in all occupy an area greater than twenty acres and: *Provided further*, That in those places used and occupied for the purpose of bedding marketable oysters no one person shall occupy an area greater than one hundred by two hundred feet or twenty thousand feet of superficial area.

SEC. 1192. Any person may transfer his right to any other person qualified to hold by signing the transfer upon record in the presence of the auditor or by a written transfer witnessed and acknowledge in the same manner as is, or may be required for deeds.

SEC. 1193. It shall be the duty of the county auditor of any county, where claims and transfers made under the provisions of this title are presented to him for record or entry, to receive and record the same in a separate book provided for this purpose upon being paid the same fees as are allowed in similar cases.

SEC. 1194. From and after the approval of this act it shall not be lawful for any person, who is not at the time an actual inhabitant and resident of this territory, and who has not been for six months, next preceding, an actual inhabitant or resident as aforesaid, to take or gather oysters either on his own account or on account of others for sale or transportation, in any of the rivers, bays or waters of this territory; and, on conviction, shall be fined in any sum not exceeding five hundred dollars, nor less than one hundred dollars, or to imprisonment in the county jail for a period not exceeding six months, nor less than one month, or both, at the discretion of the court.

SEC. 1195. It shall not be lawful for any person to rake for or gather oysters in any of the rivers, bays or waters of this territory, with a dredge or instrument so called, or be employed upon any canoe, boat or vessel engaged in the taking of oysters by the process of dredging in any of the waters aforesaid, not above the lowest ebb-tide, and, on conviction thereof, shall be fined in any sum not exceeding the sum of fifty dollars, or to imprisonment in the county jail for a period not exceeding twenty days, nor less than ten days, or both in the discretion of the court.

Sec. 1196. It shall not be lawful for any person to rake, scrape or gather oysters in any of the rivers, bays or waters of this territory, for any purpose whatever, from the fifteenth day of May until the first day of September of each year, and, on conviction thereof, shall be fined in any sum not exceeding the sum of fifty dollars for each offense, or to imprisonment in the county jail for a period not exceeding twenty days, nor less than ten, or both, at the discretion of the court.

Sec. 1197. It shall not be lawful for any person to destroy oysters taken from the natural beds by assorting or culling them on land or shore and leaving the small oysters there to die; but in all cases the small oysters shall be returned to their natural beds or to private beds for cultivation; and if any person shall offend against the provisions of this section or in any way wantonly destroy the small oysters, he shall, on conviction thereof, be liable to a fine for each offense, or imprisonment, [as prescribed] in section eleven hundred and ninety-five.

Sec. 1198. Any person or persons, being a citizen or citizens of the United States, who shall discover any bed or beds of oysters in any bay or arm of the sea bordering upon this territory, that has not been before discovered, shall, by right of said discovery, be entitled to the exclusive right or privilege of gathering or dredging oysters on said bed or beds for the term of five years. The person, or persons, making such discovery, who desires to avail himself of the rights and privileges hereby granted, shall be required to designate the place and area of the bed or beds so discovered, with the stakes or other artificial marks, and shall make affidavit before the county auditor of the county in which such discovery has been made, that he located the premises so discovered, accompanied by a description and diagram of the same, which shall be filed in the office of said county auditor: *Provided*, That the restriction and protection of the discoveries shall be ten acres.

Sec. 1199. That it shall not be lawful for any person to gather oysters by any means on any beds located in accordance with the preceding section, except at the option and by the permission of the party or parties holding the same, under a penalty of five hundred dollars' fine for so offending, or imprisonment, to be recovered in a civil action, to be brought in the name of the territory.

## TO PROVIDE FOR THE PROTECTION OF GAME.

[Acts of 1875 and 1877.]

Sec. 1200. It shall be unlawful for any persons or persons to kill any deer for the purpose of selling the same, or offering them for sale in the market, from the first day of February to the first day of August in each year.

Sec. 1201. It shall be unlawful for any person or persons, at any time, to wantonly kill any elk for the purpose of securing their horns and hides for sale.

Sec. 1202. It shall be unlawful to kill or trap, except for the purpose of propagating, any quail or what is commonly known as the bob-white, until the first day of August in each year.

Sec. 1203. It shall be unlawful to kill or trap, except for the purpose of propagating, any blue grouse, pin-tailed grouse, or prairie chickens, or ruffed grouse commonly known as pheasants, for the purpose of selling the same, or offering them for sale, from the first day of January to the first day of August each year.

Sec. 1204. Any owner or other legal occupant of any enclosed premises, used for meadow, pasture, cultivation or other use, may post, at the usual place or places of entering upon the same, written or printed notices, forbidding persons to trespass upon said enclosed premises, for the purpose of hunting or pursuing game, without first obtaining the consent of the owner or legal occupant thereof, he shall be deemed guilty of a misdemeanor, and for every such offense, the trespasser shall be liable to a fine of ten dollars, one-half of which shall be paid to the owner or legal occupant of such premises, and the other half into the school fund in the county in which the act of trespass is committed. For the carrying out of the provisions of this section, the owner or legal occupant of the premises may arrest the trespasser upon his premises, taken in the act, without a warrant, and take him before the nearest justice of the peace for trial, or may have a warrant issued as in other cases of misdemeanor; and any barrier, as river, lake, or other obstruction to the passage of stock, shall, for the purposes of this act constitute an enclosure.

Sec. 1205. Any person or persons violating any of the provisions of sections 1200 or 1201, shall be fined in any court of competent jurisdiction not less than ten dollars nor more than twenty-five dollars for each offense, one-half to be paid to the informer and the other half into the school fund in the county in which such informer may reside; and in case of non-payment of said fine, to be imprisoned in the county jail not more than thirty days.

Sec. 1206. Any person violating any of the provisions of sections 1202 or 1203 of this act shall be fined not to exceed ten dollars for each offense, the amount of said fine to be divided as provided in section 1205, and in case of non-payment of such fine the delinquent may be imprisoned not to exceed ten days.

Sec. 1207. Nothing in this title shall be so construed as to prevent any person from killing any of the birds or animals heretofore mentioned, except quails, for their own personal use, or for the protection of their crops on their own premises, at any time during the year.

### FOR THE PROTECTION OF BUOYS AND BEACONS.

[Act approved Nov. 5, 1875.]

Sec. 1208. Any person or persons who shall moor any vessel or vessels, of any kind or name whatever, or any boat, skiff, barge, scow, raft or part of raft to any buoy or beacon placed in the navigable waters of this territory, or in any bay, river, or arm of the sea bordering upon this territory by authority of the United States light house board, or shall in any manner hang on with any vessel, boat, skiff, barge, scow, raft or part of a raft, to any such buoy or beacon, or shall willfully remove, damage, or destroy any such buoy or beacon, or shall cut down, remove, damage, or destroy any beacon or beacons erected on land in this territory, by the authority of the said United States light house board, shall, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine not less than one hundred nor more than two hundred dollars, or by imprisonment in the county jail not less than one, or more than six months, or by both such fine and imprisonment, in the discretion of the court.

Sec. 1209. One-half of all fines under the preceding section shall be paid by the court to the informer, and the other half shall be paid into the common school fund of the county in which the offense shall be committed.

## FOR THE SUPPRESSION OF HOUSES OF ILL-FAME.

[Act January 23, 1863.]

Sec. 1210. Every person who shall keep a house of ill-fame in this territory, resorted to for the purposes of prostitution and lewdness, or who shall reside in such house for the purposes aforesaid, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in a common jail for a term not exceeding six months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment, at the discretion of the court.

Sec. 1211. Whenever the lessee of any house shall be convicted of the offense of keeping such house of ill-fame as aforesaid, the lease or contract for letting such house shall, at the option of the lessor, become void, and such lessor shall thereupon have the like remedy to recover the possession of such house, as is provided against a tenant holding over after the termination of his lease.

Sec. 1212. Every justice of the peace may, on the complaint of any citizen of the county, require sureties of the peace and good behavior from any person who shall be guilty of keeping or maintaining houses reputed to be houses of bawdry and ill-fame; and every person being so ordered to find sureties of the peace and good behavior, who shall neglect or refuse to comply with such order, may, by said justice, be committed to the common jail in the county where the offense was committed for a term not exceeding thirty days; and the bond required, as aforesaid, shall be filed with the county auditor of the county where the offense was committed, and from said order the accused shall have the right to appeal to the next district court in the county within which the offense was committed.

Sec. 1213. When any person, prosecuted under section twelve hundred and twelve, shall be required to procure sureties of the peace and good behavior, such person shall pay costs of prosecution; and on failure so to do, shall be imprisoned in the county jail, at the discretion of the court, having cognizance thereof, until such costs be paid and satisfied.

## OF ILLEGITIMATE CHILDREN.

Sec. 1214. When any woman residing in any county of the territory is delivered of a bastard child, or is pregnant with a child, which, if born alive, will be a bastard, complaint may be made in writing by any person to the district court of the county where she resides, stating that fact, and charging the proper person with being the father thereof. The proceeding shall be entitled in the name of the territory against the accused as defendant.

Sec. 1215. Upon the filing of the complaint, the clerk shall cause notice to be given to the person so charged as in an ordinary action.

SEC. 1216. From the time of the filing of such complaint, a lien shall be created upon the real property of the accused in the county where the action is pending, for the payment of any money and the performance of any order adjudged by the proper court: *Provided*, That no lien shall attach, until notice of the pendency of the action is filed in the auditor's office of the county where the real property is situated.

SEC. 1217. If the complaint is verified the district judge may order an attachment to issue thereon without bond, which order shall specify the amount of property to be seized under the attachment, and may be revoked at any time by such judge or the district court, on a showing made to either for a revocation of the same, and on such terms as such court or judge may deem proper in the premises.

SEC. 1218. The prosecuting attorney, on being notified of the facts, shall prosecute the matter in behalf of the complainant.

SEC. 1219. The issue on the trial shall be "guilty" or "not guilty," and shall be tried as an ordinary action.

SEC. 1220. If the accused be found guilty, he shall be charged with the maintenance of the child in such sum or sums, and in such manner as the court shall direct, and with the costs of the suit; and the clerk may issue execution for any sum ordered, to be paid immediately, and afterwards, from time to time, as it shall be required to compel compliance with the order of the court.

SEC. 1221. The court may, at any time, enlarge, diminish or vacate any order or judgment rendered in the proceeding herein contemplated, on such notice to the defendant as the court or judge may prescribe.

### TO PREVENT PERSONS FROM ENTICING SEAMEN TO DESERT.

[Act January 24, 1863.]

SEC. 1222. If any person or persons shall entice any seaman to desert from any vessel belonging to any citizen or citizens of the United States or any foreign country, while lying within the waters of this territory, and on board of which said seaman shall have shipped for a term or voyage unexpired at the time of such enticement, such person or persons shall be deemed guilty of a misdemeanor, and on conviction by any court of competent jurisdiction, shall be sentenced for the first offense, to imprisonment in the county jail not less than two months, nor more than six months, or to a fine not less than fifty dollars nor more than five hundred dollars; and for each subsequent offense, to imprisonment not less than six months, nor more than two years, or a fine of not less than five hundred dollars, nor more than one thousand.

SEC. 1223. Any person or persons who shall harbor or secrete [a] seaman shipped as aforesaid, knowing him to be so shipped, and with a view to persuade or enable said seaman to desert, shall be deemed guilty of a misdemeanor, and punished as provided in section twelve hundred and twenty-two.

### TO PREVENT THE DESTRUCTION OF TIMBER BY FIRE.

[Act approved Nov. 6, 1877.]

SEC. 1224. If any person shall kindle a fire in any field, pasture, enclosure, forest, prairie or timber land, not his own, without the consent of the owner, and the same shall spread and do damage to any buildings, fences, crops, cord-wood, bark or other personal property, or to any wood or timber land, he shall on conviction, be punished by a fine of not less than ten nor more than five hundred dollars, and costs, according to the aggravation of the offense and shall stand committed till the fine and costs are paid.

Sec. 1225. If any person shall maliciously, with intent to injure any other person, by himself or any other person, kindle a fire on his own land, or the land of another person, and by means of such fire the buildings, fences, crops, or other personal property or wooded timber lands of any other person shall be destroyed or injured, he shall on conviction be punished by a fine not less than twenty dollars, nor more than one thousand dollars, or by imprisonment in any of the jails of this territory not less than three months, nor more than twelve months according to the aggravation of the offense.

Sec. 1226. If any person shall for any lawful purpose kindle a fire upon his own land, he shall do it at such time and in such manner, and shall take such care of it to prevent it from spreading and doing damage to other persons' property, as a prudent and careful man would do, and if he fail so to do he shall be liable in an action to any person suffering damage thereby to the full amount of such damage.

Sec. 1227. Any person who shall enter upon the lands of another person for the purposes of hunting or fishing, and shall, by the use of fire arms, or other means, kindle any fire thereon, shall be liable to the penalties of section 1224 or 1225 of this act as the case may be.

Sec. 1228. Persons engaged in driving lumber upon any waters or streams of this territory, may kindle fires when necessary for the purposes in which they are engaged, but shall be bound to use the utmost caution to prevent the same from spreading and doing damage; and if they fail so to do, they shall be subject to all liabilities and penalties of this title, in the same manner as if the privilege granted by this section had not been allowed.

Sec. 1229. The common law right to an action for damages done by fires, is not taken away or diminished by this title, but it may be pursued notwithstanding the fines or penalties set forth in the 1224th and 1225th sections of this act; but any person availing himself of the provisions of 1226th section shall be barred of his action at common law for the damages so sued for and no action shall be brought at common law for kindling fires in the manner described in the 1228th section; but if any such fires shall spread and do damage, the person who kindled the same and any person present and concerned in driving such lumber, by whose act or neglect such fire is suffered to spread and do damage shall be liable in an action on the case for the amount of damages thereby sustained.

## LIBEL.

[Act approved Nov. 5, 1879.]

Sec. 1230. A libel is the defamation of a person made public by any words, printing, writing, sign, picture, representation or effigy, tending to provoke him to wrath or expose him to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social intercourse; or any defamation made public as aforesaid, designed to blacken and villify the memory of one who is dead, and tending to scandalize or provoke his surviving relatives or friends.

Sec. 1231. Every person who makes, composes, dictates, or procures the same to be done, or who publishes or willfully circulates such libel, or in any way knowingly and willfully aids or assists in making, publishing or circulating the same shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Sec. 1232. An indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment is founded; but it shall be sufficient to state generally, that the same was published concerning him and the fact that it was so published, must be established, on the trial.

Sec. 1233. In prosecution for libel the truth thereof may be given in evidence to the jury, and if it appear to them that the matter charged as libelous was a crime punishable by fine or imprisonment and was true, and that the same was published with good motives and justifiable ends, the defendant shall be acquitted.

Sec. 1234. The delivering, selling, reading or otherwise communicating a libel, or causing the same to be delivered, sold, read, or otherwise communicated to one or more persons, or to the party libeled, shall be deemed a publication thereof.

### DEFINING NUISANCE, AND SECURING REMEDIES, GENERAL PRINCIPLES.

[Act approved Nov. 12, 1875.]

Sec. 1235. Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.

Sec. 1236. A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

Sec. 1237. Every nuisance not included in the definition of the last section is private.

Sec. 1238. Nothing which is done or maintained under the express authority of a statute, can be deemed a nuisance.

Sec. 1239. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property caused by a former owner, is liable therefor in the same manner as the one who first created it.

Sec. 1240. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

### PUBLIC NUISANCE AND ABATEMENT THEREOF.

Sec. 1241. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

Sec. 1242. The remedies against a public nuisance are: Indictment, a civil action, or abatement. The remedy by indictment shall be as regulated and prescribed in this chapter. When a civil action for damage is resorted to, the practice shall conform to chapter 50 of the civil practice act, under title "nuisance."

SEC. 1243. A private person may maintain a civil action for a public nuisance, if it is specially injurious to himself but not otherwise.

SEC. 1244. A public nuisance may be abated by any public body or officer authorized thereto by law.

SEC. 1245. Any person may abate a public nuisance which is specially injurious to him by removing, or if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

SEC. 1246. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals or the public; the causing or suffering any offal, filth or noisome substance to be collected or to remain in any place to the prejudice of others; the obstructing or impeding without legal authority, the passage of any navigable river, harbor or collection of water, or the corrupting or rendering unwholesome or impure the water of any river, stream or pond; or unlawfully directing the stream from its natural course or state to the injury or prejudice of others; and the obstructing or encumbering by fences, buildings or otherwise, the public highways, private ways, streets, alleys, commons, landing places, or burying grounds, are nuisances.

SEC. 1247. Houses of ill fame, kept for the purpose, in which are embraced all squaw dance houses, or squaw brothels, otherwise called mad houses, all houses, rooms, saloons, booths, scows, boats, or other structures used as a place of resort, where women are employed to draw custom, dance, or for purposes of prostitution; all public houses or places of resort where gambling is carried on, or permitted; all houses or places within any city, town, or village, or upon any public road, or highway where drunkenness, gambling, fighting or breaches of the peace are carried on, or permitted; all opium dens, or houses, or places of resort where opium smoking is permitted, are nuisances, and may be abated, and the owners, keepers, or persons in charge thereof, and persons carrying on such unlawful business shall be punished as provided in this chapter. [Act, Nov. 6, 1877.]

SEC. 1248. Whoever is convicted of erecting, causing or contriving a public or common nuisance as described in this chapter, or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be punished by a fine not exceeding one thousand dollars, and the court with or without such fine, may order such nuisance to be abated, and issue a warrant as hereinafter provided.

SEC. 1249. When, upon indictment, complaint or action, any person is adjudged guilty of a nuisance, the court before whom such conviction is had, may, in addition to the fine imposed, if any, or to the judgment for damages or costs, for which a separate execution may issue, order that such nuisance be abated, or removed at the expense of the defendant, and after inquiry into and estimating, as nearly as may be, the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor.

SEC. 1250. When the conviction is had upon an action before a justice of the peace, and no appeal is taken, the justice, after estimating as aforesaid, the sum necessary to defray the expenses of removing or abating the nuisance, may issue a like warrant.

Sec. 1251. Instead of issuing such warrant, the court or justice may order the same to be stayed upon motion of the defendant, and upon his entering into a bond in such sum and with such surety as the court may direct to the territory, conditioned either that the defendant will discontinue said nuisance, or that within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either is directed by the court, and upon his default to perform the condition of his bond, the same shall be forfeited, and the court, in term time or vacation, or justice of the peace, as the case may be, upon being satisfied of such default, may order such warrant forthwith to issue, and a rule to show cause why judgment should not be entered against the sureties of said bond.

Sec. 1252. The expense of abating a nuisance, by virtue of a warrant, can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant or to the owner of the property levied upon, and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof.

### TO PREVENT AND PUNISH GAMBLING.

[Act approved Nov. 13, 1879.]

Sec. 1253. Each and every person who shall deal, or carry on or open or cause to be opened, or who shall conduct, either as owner, proprietor, employe, whether for hire or not, any game of faro, monte, roulette, rouge et noir, lansquenette, rondo, vingt-un (or twenty-one), poker, draw poker, brag, bluff, thaw, tan, or any banking or other game played with cards, dice, or any other device, whether the same be played for money, checks, credits, or any other representative of value, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, and shall be imprisoned in the county jail until such fine and costs are paid: *Provided*, That such persons so convicted shall be imprisoned one day for every two dollars of such fine and costs: *And provided further*, That such imprisonment shall not exceed one year: *And still further provided*, That any one who shall carry on any chuck-a-luck, bunko, strap, sling, panel house or other swindling game shall be deemed guilty of a felony, and, upon conviction, shall be imprisoned in the penitentiary not exceeding five years for such offense.

Sec. 1254. All notes, bills, bonds, mortgages, or other securities, or other conveyances, the consideration for which shall be money, or other things of value, won by playing at any of said games, shall be void and of no effect, as between the parties to the same and all other persons, except holders in good faith, without notice of the illegality of such contract or conveyance.

Sec. 1255. All persons losing money or anything of value at or on any of said games, shall have a cause of action to recover from the dealer or player winning the same or proprietor for whose benefit such game was played or dealt, or such money or things of value won, the amount of the money or the value of the thing so lost.

SEC. 1256. Every person who shall let or rent any room or building for a gaming house, or house of ill fame, or for rent or hire, shall permit any game to be dealt upon his premises, prohibited by section 1253, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars.

SEC. 1257. It shall be lawful for any person letting or renting any house, room, shop or other building whatsoever, or any boat, booth, garden, or other place, which shall, at any time, be used by the lessee or occupant thereof, or any other person, with his knowledge or consent, for gambling purposes, upon discovery thereof, to avoid and terminate such lease, or contract of occupancy, and to recover immediate possession of said boat, building or other place above mentioned by an action at law for that purpose, to be brought before any justice of the peace of the of the county in which such use shall be permitted.

SEC. 1258. Any person who shall suffer or permit any of the acts or things forbidden by, or made punishable by this title to be done or carried on in any house, room or shop, or other building whatsoever, or any boat, booth, garden, or other place of which he is the owner, or in the possession of which he is entitled, under sections 1253 and 1256, shall be guilty of a misdemeamor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars and be imprisoned in the county jail until such fine is paid.

SEC. 1259. It shall be the duty of each prosecuting attorney, sheriff, constable, city or town marshal, or public officer, to inform against and diligently prosecute any and all persons whom they shall have reasonable cause to believe guilty of a violation of the provisions of this title.

SEC. 1260. Any officer named in the preceding section, who shall refuse or willfully neglect to inform against and prosecute offenders against this act, shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not less than fifty, nor more than five hundred dollars, and the court before which such officer shall be tried, shall declare the office, or appointment held by such officer vacant for the balance of his term.

SEC. 1261. If any person, who shall have been summoned as a witness on the part of the prosecution, shall fail or refuse to attend at the time fixed for trial, without a reasonable excuse, the person so failing or neglecting shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail not less than twenty-five days, nor more than three months, or by both such fine and imprisonment, in the discretion of the court.

SEC. 1262. No person shall be deemed guilty of gambling who shall play at any game of chance or skill for amusement or pastime only, and not for gain to himself or another.

### BARBED WIRE FENCES.

SEC. 1263. It shall be unlawful for any person or persons to construct, keep or maintain, any fence of barbed or other wire, without securely fastening to the posts of said fence a substantial pole, rail or plank, at least three feet above the ground.

Sec. 1264. Any person violating any of the provisions of this title shall be liable in damages to the amount of injury sustained, to be recovered in any court having jurisdiction thereof, to be paid to the person whose property shall have been injured.

Sec. 1265. Any person violating any of the provisions of this title shall be deemed guilty of a misdemeanor, and upon conviction thereof, by any justice of the peace, shall be fined not less than twenty-five dollars, nor more than one hundred dollars, and shall stand committed until such fine and costs are paid.

### OBSERVANCE OF SUNDAY.

[Act approved January 20, 1866.]

Sec. 1266. No person shall keep open any play-house or theater, race-ground, cock-pit, or play at any game of chance for gain, or engage in any noisy amusements, or keep open any drinking or billiard saloon, or sell or dispose of any intoxicating liquors, as a beverage, on the first day of the week, commonly called Sunday.

Sec. 1267. No judicial business shall be transacted by any court, except the deliberations of a jury, who have received a case on a week day so called and who receive further instructions from the court at their request, or deliver their verdict, nor any civil process be served by certifying or attesting officer, or any record made by the legally appointed or elected officer, upon the day of the week, commonly called Sunday: *Provided*, That criminal process may issue, for the apprehension of any person charged with crime, and criminal examination to be proceeded with. Writs of arrest, attachment and injunctions may issue and be served on Sunday, in all cases in which the said writs might have been issued and served under the provisions of the civil code, the justices' practice act, and the probate practice act.

Sec. 1268. Any person violating any of the provisions of the two preceding sections of this act, shall be punished, upon conviction thereof, by a fine of not less than thirty dollars, nor more than two hundred and fifty dollars for each offense.

Sec. 1269. All violations of the provisions of this title shall be triable in any court having jurisdiction thereof.

Sec. 1270. The person or persons found guilty of any offense specified in this title, shall be fined as aforesaid, to be paid to the treasurer of the county for the benefit of common schools, and the offender shall stand committed until the fine and costs are paid, or the same be commuted by confinement, at the rate of two dollars per day.

### VAGRANCY.

[Act approved November 12, 1875.]

Sec. 1271. The following persons are vagrants: All person who tell fortunes, or who keep houses where lost and stolen goods may be found; all common prostitutes, and keepers of bawdy houses or houses for the resort of prostitutes; all habitual drunkards, gamesters, or other disorderly persons; all persons wandering about and having no visible calling, or business to maintain themselves; all persons going about as collectors of alms for charitable institutions under any false, or fraudulent pretense; all persons playing or betting in any street or public or open place, at, or with any table or instrument of gaming at any game or pretended game of chance.

Sec. 1272. Upon complaint made on oath to any justice of the peace against any person as being such vagrant within his local jurisdiction as defined in section 1271 he shall issue a warrant for the arrest of such person. and his examination, and the complaint, warrant and arrest shall be governed by the provisions of chapter 134, the justice practice act, title of, "Examination of offenders, commitment for trial and taking bail," so far as the same may be applicable.

Sec. 1273. All peace officers shall arrest any vagrant whom they may find at large, and take him before some justice of the peace, of the county, city, or town, in which the arrest is made.

Sec. 1274. If the arrests authorized in the last two sections, are made during the night, the officer must keep the person arrested in confinement until the next morning.

Sec. 1275. If it appear by the confession of such person, or by competent testimony, that such person is a vagrant, the justice of peace before whom he is brought, may require of such person bond, with sufficient surety, for good behavior for the term of three months thereafter.

Sec. 1276. The justice shall make up, sign and file with the clerk of the district court of the county, a record of conviction of such person as a vagrant, specifying generally the nature and circumstances of the charge, and shall, in default of such security being given. by warrant under his hand, commit such vagrant to the county jail of the county, city, or town, as the case may be, until such security be found, or such vagrant be discharged, according to law.

Sec. 1277. The committing of any of the acts which constitute such person so bound a vagrant, shall be deemed a breach of the condition of such bond for good behavior.

Sec. 1278. On a recovery upon any such bond, the court before which such recovery may be had, may, in its discretion, either require new sureties for good behavior, or may commit such vagrant to the county jail of the county for any time not exceeding six months.

Sec. 1279. Any person committed to jail for not finding sureties for good behavior may be discharged by any magistrate upon giving such sureties for good behavior as were originally required of such person.

Sec. 1280. The district court to which the papers are returned, shall, on demand of the defendant, empannel a jury to enquire into and determine the truth of the charge made against him; and the rules and regulations of law governing said court in the trials of misdemeanors shall be applicable to, and govern it in the trial herein contemplated.

Sec. 1281. If no jury be demanded, the district court may revise such conviction and discharge such vagrant from the bond, or confinement absolutely, or upon sureties for good behavior, in its discretion.

Sec. 1282. Such district court may, in its discretion, order any such vagrant to be kept in the county jail for any time not exceeding six months at hard labor.

Sec. 1283. If there be no means in such jail for employing offenders at hard labor, such court may direct the keeper thereof to furnish such employment as it shall specify to such vagrant as may be committed thereto, either by a justice or any court, and for that purpose to purchase any necessary raw materials, and implements, not exceeding such amount as the court shall prescribe, and to compel such persons to perform such work as shall be allotted to them.

Sec. 1284. The expenses incurred in pursuance of such order shall be audited by the board of [county] commissioners of the county, and paid out of the county treasury.

Sec. 1285. One-half of the net of proceeds of such labor shall be paid to the person earning the same, upon his discharge from imprisonment, and the other half shall be paid into the county treasury for the use of the county.

### RELATING TO THE MEASUREMENT OF CHARCOAL.

[Act approved Nov. 9, 1877.]

Sec. 1286. All baskets for measuring charcoal, in this territory, shall contain two bushels and shall be of the following dimensions, viz: Nineteen inches in breadth in every part thereof, and seventeen and one-half inches deep, measuring from the top of the basket to the highest part of the bottom and be well heaped: *Provided*, That nothing in this act shall be construed so as to prevent the use of any basket, box or other measure in conformity with the standard of measurement as provided in this section.

Sec. 1287. Any person or persons who shall violate the provisions of the preceding section shall be liable to a fine of five dollars for each and every offense so committed to be collected in similar manner as other fines for similar cases are now collected and all fines collected as aforesaid shall belong to the school fund of the county in which such offense or offenses may have been committed.

### IN RELATION TO FIRE HUNTING FOR DEER, ELK OR MOOSE.

[Act approved Nov. 12, 1875.]

Sec. 1288. It shall be unlawful for any person or persons to fire-hunt for deer, moose or elk, except within the bounds of his own enclosure or by the permission of the owner of any other enclosure.

Sec. 1289. Any person or persons, upon conviction thereof, shall be fined twenty dollars for each and every offense, one-half of said fine to go to the informer, and the other half into the common school fund of the county where such act is done.

### REWARDS, GOVERNOR SHALL OFFER IN CERTAIN CASES.

Sec. 1290. The Governor shall offer a standing reward of two hundred dollars for the arrest of each person who shall place any obstruction on any railroad track or who shall misplace any switch, rail, or ties on any such road, whereby the life of any person passing over said road may be endangered; and for the arrest of each person engaged in the robbing or attempting to rob any person upon, or having in charge, in whole or in part, any stage coach, wagon, railroad train, or other conveyance engaged in carrying passengers, or any private conveyance within this territory, the reward to be paid to the person making such arrest out of any money in the treasury not otherwise appropriated immediately upon the conviction of the person so arrested, but no reward shall be paid except after such conviction.

SEC. 1291. The auditor of the territory shall draw a warrant upon the treasurer for the amount of the reward upon presentation to him of a certificate of the clerk of the court where the conviction was had of such conviction and the finding of the court that the satisfactory proof was made that the person claiming the reward is entitled thereto, under the provision of the preceding section.

SEC. 1292. The provisions of this code so far as they are substantially the same as existing statutes must be construed as continuations thereof and not as new enactments.

SEC. 1293. Any offense as defined by the law heretofore existing, committed prior to the approval of this code, shall in no manner be affected by the passage hereof, except that the trial and proceedings shall conform to the procedure hereinbefore prescribed, and the party convicted of such offense shall be punished in accordance with the laws so existing at the time of the commision of the offense, and for such purpose the provisions of such laws are hereby continued in force.

SEC. 1294. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy has begun to run before this code takes effect, and the same or any limitation is prescribed in this code, the time which has already run shall be deemed part of the time prescribed as such limitation by this code.

SEC. 1295. No statute, law or rule is continued in force because it is consistent with the provisions of this code on the same subject; but in all cases provided for by this code all statutes, laws, and rules heretofore in force in this territory, whether consistent or not, with the provisions of this code, unless expressly continued in force by it, are repealed and abrogated.

SEC. 1296. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this code provided; nor does it repeal any private statute not expressly repealed.

NOTE BY THE SECRETARY:—The following sections appear in the enrolled copy on file in the Secretary's office. (See note at close of volume.)

N. H. OWINGS, *Secretary of Washington Territory.*

SEC. 990. No indictment shall be found unless twelve grand jurors vote for the finding thereof.

SEC. 1189. That it shall not be lawful for any person to rake, scrape or gather oysters in any of the rivers, bays or waters of this territory, for any purpose whatever, from the fifteenth day of June until the first day of September, of each year, and any person violating this section, on conviction thereof, shall be fined in any sum not exceeding fifty dollars, for each offense, or be imprisoned in the county jail for a period not exceeding twenty days, or both, at the discretion of the court.

# PROBATE PRACTICE ACT.

## CHAPTER XCV.

### THE PROBATE COURT, ITS POWERS AND JURISDICTION.

SECTION
1297 Election of judge, title, etc.
1298. Oath of office and bond.
1299. Jurisdiction of court; court to provide and keep seal and to be a court of record.
1300. Books of record to be kept.
1301. Terms when to be held
1302. To appoint their clerks; judge may act
1303. Process from court, how attested, sealed and served.
1304. Powers of court to enforce its orders.
1305. May by attachment, enforce return of writs.
1306. Disqualification of judge in certain cases.
1307. Proceedings when judge disqualified.
1308. Adjournment and special terms of court.
1309. Judge to be a conservator of the peace.
1310. Orders in vacation.

SEC. 1297. There shall be elected at the next general election, and every two years thereafter in each county in this territory, one suitable person, who shall have the qualifications of an elector, who shall be styled the judge of the probate court, and the court hereby constituted shall be called the probate court, and such judge shall hold his office for two years, and until his successor is duly elected and qualified. The county auditors shall certify the name of the person elected to the governor of the territory, who shall thereupon commission said person judge of the probate court of the county for which he may have been elected.

SEC. 1298. Every person elected judge of the probate court shall, at the time of filing his oath of office, enter into a bond with the territory of Washington, with two or more sureties, residents of his county, to be approved by the board of county commissioners of his county, in a sum of not less than one thousand nor more than ten thousand dollars, to be fixed by the said county commissioners, conditioned that he will well and faithfully perform the duties of his office and pay over according to law any and all moneys that may come into his hands as such judge.

SEC. 1299. The said probate court shall have and possess the following powers:

1. Exclusive original jurisdiction within their respective counties in all cases relative to the probate of last wills and testaments.

2. The granting of letters testamentary and of administration, and revoking the same.

3. The appointment and displacing guardians of orphans, minors and of persons of unsound mind, and the binding of apprentices.

4. In the settlement and allowance of accounts of executors, administrators and guardians.

5. To hear and determine all disputes and controversies between masters and their apprentices.

6. To allow or reject claims against estates of deceased persons as hereinafter provided.

7. To award process and cause to come before said court all and every person or persons whom they may deem necessary to examine, whether parties or witnesses, or who, as executors, administrators or guardians or otherwise, shall be entrusted with, or in any way be accountable for any lands, tenements, goods or chattels belonging to any minor, orphan or person of unsound mind, or estate of any deceased person, with full pow-

er to administer oaths and affirmations and examine any person touching any matter of controversy before said court or in the exercise of its jurisdiction.

8. The said court shall provide and keep a suitable seal, that the court established by this act shall be a court of record, and shall keep just and faithful records of its proceedings, and shall have power to issue any and all writs which may be necessary to the exercise of its jurisdiction.

Sec. 1300. There shall be kept in each of the probate courts of this territory the following books of record, that is to say:

First. A journal in which shall be entered all orders decrees and judgments made by the court or the judge thereof and the minutes of the court.

Second. A record of wills in which shall be recorded all wills admitted to probate.

Third. A record of letters testamentary and of administration in which all letters testamentary and of administration shall be recorded.

Fourth. A record of bonds in which all bonds and obligations required by law to be approved by the probate court or judge shall be recorded.

Fifth. A record of petitions in which all petitions for orders of sale of real estate shall be recorded.

Sixth. A record of claims in which [at least] one page shall be given to each estate or case wherein shall be entered under the title of each estate or case in separate columns properly ruled: (1) The names of claimants against the estate; (2) the date of filing proof of claim; (3) the amount claimed; (4) the amount allowed; (5) the date of allowance; (6) the nature of the claim; (7) the amount paid; (8) number of the voucher for each payment; (9) the date of filing the voucher.

Seventh. A memorandum of the files in which at least one page shall be given to each estate, or case, wherein shall be noted each paper filed in the case, except proof of claims and vouchers noted in record of claims and the date of filing each paper.

Eighth. A record of marriages in which certificates of all marriages solemnized in the county shall be recorded.

Sec. 1301. A regular term of the probate court of each county shall be held at the county seat thereof, commencing on the fourth Monday in January, March, May, July, September and November in each year.

Sec. 1302. The judges of the several probate courts in the territory of Washington may act as clerks of said court and receive the fees for such clerical services, or they may appoint the clerk, who shall qualify in the same manner and be subject to the same restrictions as prescribed by law for clerks of the district court, and be entitled to receive the fees and emoluments as prescribed by law.

Sec. 1303. All process issuing out of the probate court shall be attested by the clerk and sealed with the seal of the court, and shall be served in the same manner as process issuing out of the district court.

Sec. 1304. The probate court shall have the same power and authority under like restrictions and rules of law to enforce and execute their orders, rules, judgments and decrees, as the district courts of this territory.

Sec. 1305. The said court may enforce by attachment the return of any writ or process, and the payment of any moneys over which it has jurisdiction, and to compel the production or delivery of any papers which are subjects of, or necessary to its judicial action.

SEC. 1306. No judge of the probate court shall sit on the determination of any cause or proceeding in which he is interested, or related within the fourth degree to either party, or in which he may have been counsel.

SEC. 1307. If the judge be disqualified, from any cause, for sitting on the determination of any cause or proceding pending before him, the same shall be certified with the original papers to the district court of the district including the county, which shall proceed thereon to final judgment and determination.

SEC. 1308. If said court shall not be held on the first day of the term, such court shall stand adjourned from day to day until the evening of the third day. If at that time the judge shall not have appeared and opened court, the same shall stand adjourned until the next regular term. Special adjourned terms may be held in continuation of the regular term, upon its being so ordered by the court in term time and entered upon the record of the court

SEC. 1309. Each judge of probate court shall be a conservator of the peace throughout his county.

SEC. 1310. The judges of the probate court may, at chambers, appoint appraisers, receive inventories and accounts, to be filed in the probate court, suspend the powers of executors, administrators or guardians, in the cases allowed by law, grant letters of administration, or guardianship, approve claims and bonds, and direct the issuance from the probate court, of all writs and process necessary in the exercise of their powers.

## CHAPTER XCVI.

### PRACTICE IN PROBATE CASES.

SECTION
1311. What citation to contain.
1312. How served.
1313. Service in special cases.
1314. Where orders and trials to be made.
SECTION
1315. How entered on record.
1316. Depositions, how taken.
1317. May make rules.

SEC. 1311. Whenever personal notice is required to be given to any party to a proceeding in the probate court, and no other mode of giving notice is prescribed, it shall be given by citation, issued from the court, signed by the clerk and under the seal of the court, directed to the sheriff of the proper county, requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in such citation. In the body of the citation shall be briefly stated the nature or character of the proceedings.

SEC. 1312. The officer to whom the citation is directed, shall serve it by delivering a copy to the person or persons named therein, and shall return the original to the court according to its direction, endorsing thereon the time and manner of service.

SEC. 1313. In all cases in which citations are issued from the probate court, they shall be served at least ten days before the first day of the term, except when issued from the court in cases where the law requires the judge to issue them upon his own motion, and he does so issue them, and in such cases they shall be served in sufficient time to allow the person served to be in attendance on the court, and may be made returnable on any day of the term.

Sec. 1314. All orders, settlements, trials and other proceedings entrusted by this act to the probate court, shall be had or made in the county in which letters testamentary, or of administration, were granted.

Sec. 1315. All orders and decrees made by the probate court during its term, shall be entered at length on the records of the court, and also all orders which the judge is empowered to make out of the term time, and which are by this act especially required to be so entered, and upon the close of each term the judge shall sign the minutes of the proceedings.

Sec. 1316. In all matters pending in the probate court where the deposition of a witness or witnesses becomes necessary, said court, or the judge thereof, shall issue a commission for taking the same. in like manner and with like restrictions as are prescribed in the civil practice act. And any or all such depositions lawfully taken upon any issue pending in the probate court may be used on an appeal to the district court.

Sec. 1317. Probate courts may make rules in their discretion to regulate the transaction of business in accordance with the foregoing section.

## CHAPTER XCVII.

### WILLS, AND RULES APPLICABLE TO AND GOVERNING THEIR CONSTRUCTION.

Section
1318. Who competent to make wills.
1319 Requisites and execution of a will.
1320. When testator's name be signed by another.
1321. How written will revoked
1322 When subsequent marriage works revocation.
1323 Bond. etc., to convey property not revocation.
1323. Devisee takes subject to
1324. Charge or incumbrance of estate not revocation, and estate subject to incumbrance
1325. Of children of testators, not provided for in will.
1326. Last section inoperative, if advancements made by testator.
1327. Of devise, if devisee dies before testator.
1328. How far cancelling said will, etc., may revive first
1329. Nuncupative will. when deemed good.
1329. Of wages of mariners and soldiers.
Section
1330. Proof of nuncupative will.
1331. Legacy to subscribing witness, when void, but a charge to pay creditors does not render creditors incompetent.
1331. When attesting witness, heir at law, as well as devisee, and if well established, what shall receive.
1332. Estate conveyed by a devise in will.
1333. Estates for life. created by will, remainder to revert to heirs at law of testator.
1334. Of estate acquired subsequent to execution of will.
1335 When contribution to be made by devisees and legatees.
1336. Such contribution enforced by court.
1337. Codicils included in term "will."
1338. Will and intent of testator to be regarded.
1339. Words and terms defined.

Sec. 1318. Every person who shall have attained the age of majority, of sound mind, may by last will devise all his or her estate, real and personal.

Sec. 1319. Every will shall be in writing, signed by the testator or testatrix, or by some other person under his or her direction in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator.

Sec. 1320. Every person who shall sign the testator's or testatrix's name to any will by his or her direction, shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request.

Sec. 1321. No will in writing, except in cases hereinafter mentioned, nor any part thereof, shall be revoked except by a subsequent will in writing, or by burning, canceling, tearing or obliterating the same, by the testator or testatrix, or in his or her presence, or by his or her consent or direction.

Sec. 1322. If, after making any will, the testator shall marry and the wife shall be living at the time of the death of the testator, such will shall be deemed revoked, unless provision shall have been made for her by marriage settlement, or unless she be provided for in the will, or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation shall be received.

Sec. 1323. A bond, covenant or agreement made for a valuable consideration by a testator to convey any property, devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant or agreement, for specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator or his next of kin, if the same had descended to him.

Sec. 1324. A charge or incumbrance upon any real or personal estate for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or incumbrance.

Sec. 1325. If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator so far as he shall regard such child or children or their descendants, not provided for, shall be deemed to die intestate, and such child or children or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them and all the other heirs, devisees and legatees shall refund their proportional part.

Sec. 1326. If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing by virtue of the provisions of the preceding sections.

Sec. 1327. When any estate shall be devised to any child, grandchild or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator.

Sec. 1328. If, after making any will, the testator shall duly make and execute a second will, the destruction, canceling or revocation of such second will shall not revive the first will unless it appears by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

Sec. 1329. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, unless the same be proved by two witnesses, who were present at the making thereof, and it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, and such nuncupative will was made at the time of the last sickness, and at the dwelling house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home and died before his return. Nothing herein contained shall prevent any mariner at sea, or soldier in the military service from disposing of his wages or other personal property by nuncupative will.

Sec. 1330. No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, be first committed to writing, and a citation issued to the widow or next of kin of the deceased that they may contest the will if they think proper.

Sec. 1331. All beneficial devises, legacies and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void unless there are two other competent witnesses to the same, but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. If such witness, to whom any beneficial devise, legacy or gift may have been made or given, would have been entitled to any share in the testator's estate, in case the will is not established, then so much of the estate as would have descended or would have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him.

Sec. 1332. Every devise of land in any will shall be construed to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate.

Sec. 1333. If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and without the remainder is specially devised to the heirs of said devisee, it shall revert to the heirs-at-law of the testator.

Sec. 1334. Any estate, rights or interest in lands acquired by the testator after the making of his or her will, shall pass thereby, and in like manner as if it passed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

Sec. 1335. When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs, shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Sec. 1336. When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the probate court, upon the petition of the person entitled to contribution or distribution of such estate, may order the same to be made, and enforce such order.

Sec. 1337. The term "will," as used in this act, shall be so construed as to include all codicils attached to any will.

Sec. 1338. All courts and others concerned in the execution of last wills, shall have due regard to the direction of the will, and the true intent and meaning of the testator in all matters brought before them.

Sec. 1339. Words in this chapter contained, or in this act which impart the singular number only, may also be applied to the plural of persons and things, and words imparting the masculine gender only, may be extended to females also when such construction shall be necessary.

## CHAPTER XCVIII.

### VENUE.

SECTION
1340. In what county will to be proved, etc.
1341. If estate in more than one county, and testator died out of Territory.

SEC. 1340. Wills shall be proved and letters testamentary or of administration shall be granted:

1. In the county of which deceased was a resident or had his place of abode at the time of his death.

2. In the county in which he may have died, leaving estate therein, and not being a resident of the territory.

3. In the county in which any part of his estate may be, he having died out of the territory, and not having been a resident thereof at the time of his death.

SEC. 1341. When the estate of the deceased is in more than one county, he having died out of the territory, and not having been a resident thereof at the time of his death, the probate court of that county in which application is first made for letters testamentary or of administration, shall have exclusive jurisdiction of the settlement of the estate.

## CHAPTER XCIX.

### OF THE PROOF OF WILLS.

SECTION
1342. Within what time will to be delivered to court.
1343. Within what time executor to present will to court.
1344. Duty of executor declining to act, or intending to accept.
1345. Penalty for violating the foregoing sections.
1346. Executor not having will, may petition court to have same produced.
1347. Any person having an interest in will may petition in like manner.
1348. Court may compel production of will.
1349. Applications for probate, etc., may be made in vacation.
1350. Reception of proof and certificate of probate or rejection.
1351. Court may issue commission to take testimony of absent witness.
1352. Testimony before commission same force as if taken before court.
1353. When handwriting of testator and absent witnesses, etc., may be proved.
1354. When witnesses dead, residence unknown, etc., proof.
1355. Testimony to be reduced to writing, signed and certified.
1356. Wills to be recorded and originals filed.
1357. Wills properly proved, may be read as evidence.
1358. Record of will and exemplification to be received as evidence.
1359. When lands devised are in different counties, copy of will to be recorded in each county; in what office, and within what time.
1360. Wills may be contested within one year; rejection proceeding in such case.
1361. Upon filing of petition, a citation shall issue to the executors, etc.
1362. After one year, probate or rejection final.
1363. Oath of witness at time of probate, when admissable on trials respecting validity of will.
1364. Will and probate thereof, when to be annulled and revoked.
1365. Upon revocation, powers of executor to cease.
1365. Not liable for acts done previous to service of written notice of intention to contest.
1366. Fees, etc., by whom to be paid.
1367. When will shall be lost or destroyed, its execution may be proved.
1368. When will established, duty of the probate court.
1369 Restraint of administrators, etc., during pendency of application to prove a lost or destroyed will.

SEC. 1342. Any person having the custody of any will shall, within thirty days after he shall have knowledge of the death of the testator, deliver said will into the probate court which has jurisdiction or to the person named in the said will as executor.

SEC. 1343. Any person named as executor in any will shall, within thirty days after he has knowledge that he is executor, present the will, if in his possession, to the probate court which has jurisdiction.

SEC. 1344. An executor named in the will may decline to act by filing a written renunciation at the time of filing said will; but if he intends to accept, he shall present with the will a petition praying that the will be admitted to probate and that letters testamentary be issued to him.

Sec. 1345. Any person violating the three preceding sections of this act without reasonable excuse, shall be liable to every person interested in the will for damages caused by such neglect.

Sec. 1346. Any person named as an executor in a will, not having the same in his possession, may petition the court of proper jurisdiction for an order to have the same produced, that it may be admitted to probate, and that letters testamentary may be issued to him.

Sec. 1347. Any person having an interest in the will, may in like manner present a petition praying that it may be required to be produced and admitted to probate.

Sec. 1348. The said court may compel by citation and attachment any person in whose possession any will may be, to produce it in court at such time as the court may order.

Sec. 1349. Applications for the probate of a will, or for letters testamentary, may be made to the judge of the probate court in vacation and he may also at any time issue all necessary orders and process to enforce the production of any will.

Sec. 1350. When any will is exhibited to be proven, the court may immediately receive the proof and grant a certificate of probate, or if such will be rejected, issue a certificate of rejection.

Sec. 1351. If any witness be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the territory or more than thirty miles from the place where the will is to be proven, such court may issue a commission, annexed to such will, and directed to any judge, justice of the peace or mayor, or other person, empowering him to take and certify the attestation of such witness.

Sec. 1352. If such witness appear before such officer and make oath or affirmation that the testator signed the writing annexed to such commission, as his last will, or that some other person signed it by his direction and in his presence, that he was of sound mind, that the witness subscribed his name thereto in presence of the testator, the testimony so taken shall have the same force as if taken before the court.

Sec. 1353. When one of the witnesses to such will shall be examined and the other witnesses are dead, insane, or their residence unknown, then such proof shall be taken of the handwriting of the testator, and of the witnesses dead, insane, or residence unknown, and of such other circumstances as would be sufficient to prove such will.

Sec. 1354. If it shall appear to the satisfaction of the court that all the subscribing witnesses are dead, insane or their residence unknown, the court shall take and receive such proof of the handwriting of the testator and subscribing witnesses to the will, and of such other facts and circumstances as would be sufficient to prove such will.

Sec. 1355. All the testimony adduced in support of the will shall be reduced to writing, signed by the witnesses and certified by the judge of the probate court.

Sec. 1356. All wills shall be recorded in a book kept for that purpose, within thirty days after probate, and the originals shall be carefully filed.

Sec. 1357. Every will proved according to the provisions of this chapter, recorded and certified by the judge of the probate court and attested by the seal of said court, may be read as evidence without any further proof.

Sec. 1358. The record of any will made, proved and recorded as aforesaid, and the exemplification of such record by the judge of probate, in whose custody the same may be, shall be received as evidence, and shall be as effectual, in all cases, as the original would be if produced and proven.

Sec. 1359. In all cases where lands devised by last will are situated in different counties, a copy of such will shall be recorded in the county auditor's office in each county within six months after probate.

Sec. 1360. If any person interested in any will shall appear within one year after the probate or rejection thereof, and by petition to the probate court having jurisdiction, contest the validity of said will, or pray to have the will proven which has been rejected, he shall file a statement containing his objections and exceptions to said will, or to the rejection thereof. An issue shall be made up in said probate court respecting the competency of the deceased to make last will and testament, or respecting the execution by the deceased of such last will and testament under restraint, or undue influence, or fraudulent representations, or for any other cause affecting the validity of such will. Such issue or issues shall, at the request of either of the parties interested, be certified immediately to the district court of the district which may embrace the county where probate jurisdiction has been exercised. After the trial of such issue, without an appeal or writ of error shall be taken in said case to the supreme court, the district court shall remit the proceedings upon such trial, together with the findings and decision, to the probate court. The probate court shall render judgment according to the decision of the district court, or upon appeal to the supreme court, then upon the judgment or decision of said supreme court.

Sec. 1361. Upon the filing of the petition referred to in the next preceding section, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the territory, or to their guardians, if any of them are minors, or their personal representatives, if any of them are dead, requiring them to appear before the court on some day of a regular term therein specified, to show cause why the petition should not be granted.

Sec. 1362. If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, save to infants, married women, persons absent from the United States, or of unsound mind, a period of one year after their respective disabilities are removed.

Sec. 1363. In all trials respecting the validity of a will, if any subscribing witness be deceased, or cannot be found, the oath of such witness, examined at the time of probate, may be admitted as evidence.

Sec. 1364. If, upon the trial of said issue, it shall be decided that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will and probate thereof shall be annulled and revoked.

Sec. 1365. Upon the revocation being made, the powers of the executor or administrator with the will annexed, shall cease, but such executor or administrator shall not be liable for any act done in good faith previous to service of written notice of intention to contest said will.

SEC. 1366. The fees and expenses shall be paid by the losing party. If the probate be revoked or the will annulled, the party who shall have resisted such revocation shall pay the cost and expenses of proceedings out of the property of the deceased.

SEC. 1367. Whenever any will be lost or destroyed, by accident or design, the probate court shall have power to take proof of the execution and validity of the will, and to establish the same, notice to persons interested having first been given; such proof shall be reduced to writing and signed by the witnesses. But no will shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions shall be clearly and distinctly proved by at least two credible witnesses.

SEC. 1368. When any will shall be established, the provisions thereof shall be distinctly stated and certified by the probate judge, under his hand and the seal of the court; and the certificate, together with the testimony upon which it is founded, shall be recorded as other wills are required to be recorded, and letters testamentary or of administration, with the will annexed shall be issued thereon, in the same manner as upon wills produced and duly proved.

SEC. 1369. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator be granted, the court shall have authority to restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

## CHAPTER C.

### RELATING TO PROBATE OF FOREIGN WILLS.

SECTION
1370. How admitted to probate.

SEC. 1370. Wills probated in any other state or territory of the United States, or in any foreign country or state, shall be admitted to probate in this territory on the production of a copy of such will and of the original record of probate thereof, authenticated by the attestation of the clerk of the court in which such probation was made; or if there be no clerk, by the attestation of the judge thereof, and by the seal of office of such officers, if they have a seal.

SEC. 1371. All provisions of law relating to the carrying into effect of domestic wills after probate, shall, so far as applicable, apply to foreign wills admitted to probate in this territory as contemplated in the preceding section.

## CHAPTR CI.

### LETTERS TESTAMENTARY AND OF ADMINISTRATION AND BONDS OF EXECUTORS AND ADMINSTRATORS.

SECTION
1372. Letters testamentary to be granted executors.
1372. If they refuse to act, or be disqualified, proceedings.
1373. Objections to granting letters to executors may be filed, and objection shall be heard.
1374. Proceedings when executor is a minor, or absent from Territory.

SECTION
1375. Proceedings when will is found after letters of administration are granted.
1376. Proceedings when such will is set aside.
1377. Marriage of executrix or administrix extinguishes her powers.
1378. Court to revoke letters granted in certain cases.

SECTION
1379. No executor of an executor to administer on estate of first testator.
1379. Proceedings on death of sole or surviving executor.
1380. When a part only of executors named are appointed, acts as effectual as if all were appointed.
1381. Authority of administrator with the will annexed.
1382. Letters to be signed by clerk of probate, to be under seal of court, and to have copy of will attached.
1383. Administrator, etc., to make oath that he knows of no other or subsequent will.
1384. Letters testamentary, etc., to be recorded.
1385. Certified copies to be received as evidence.
1386. Form of letters testamentary to executors.
1387. Form of letters of administration, with the will annexed.
1388. To what persons administration to be granted, and in what order.
1389. Application for letters of administration, how to be made.
1390. Affidavit required from administrators of goods remaining unadministered, and during contest about will, or granting letters.
1391. Clerk must give notice of petition for letters of administration.
1392. Letters of administration to be signed and sealed.
1393. Executors and administrators must make oath.
1394. Executors and administrators to give bond, form and condition thereof.
1395. Additional bond may be required; when; additional security for rents, etc.
1397. Court must take a separate bond.
1398. Bond not void on first recovery.
1399. Qualification and justification of surety.
1400. Judge may cite sureties to appear for justification.
1401. Additional bond discharges former sureties.
1402. Effect of failures to give sufficient sureties.
1403. Letters testamentary may issue without bond; when.
1404. Proceeding when securities are becoming insolvent.
1405. Executor or administrator may be cited to show cause, why they should not give further surety.
1406. Judge must hear proof as to sufficiency of securities, and make order requiring additional sureties.
1407. Judge may remove administrator or executor for failure to comply with order.
1408. Judge may, without application, cause executor or administrator to give additional security.
1409. Certain persons not to be taken as surety.

SECTION
1410. Judge to take good security may examine on oath persons offered.
1411. Bonds to be recorded, originals filed.
1412. No bond void for want of form.
1413. Foregoing applications may be heard in vacation.
1414. Judge may suspend administrator or executor for malfeasance or misfeasance.
1415. Proceedings after such suspension.
1416. Any person interested may file allegations, showing cause for removal.
1417. If executor or administrator absconds, etc., notice by publication may be given.
1418. Court may compel attendance by attachment.
1419. Special administrator may be appointed; when.
1420. Bond of special administrator.
1421. Duty and power of special administrator, and compensation.
1422. Upon grant of letters, his power to cease, as to suit commenced by special administrator.
1423. Not liable to action by creditor of deceased.
1423. From what time limitation as to suits to commence.
1424. Special administrator to render an account, on oath, of proceedings.
1425. Executor may resign; how.
1426. Released executor, etc., liable for costs of application.
1427. Surviving executors to perform all duties.
1428. In case the executors die, resign, etc., to whom letters to be granted.
1429. Legal representatives of deceased executor, to deliver to successor all moneys, deeds, etc.
1430. Succeeding administrator may proceed against any delinquent, former executor, etc.
1431. Suits against securities, within what time to be commenced.
1432. Of executors failing to make settlement.
1433. *Ib.*, as to those who have surrendered their letters, or legal representatives of deceased executors.
1434. Delinquents in such cases, to pay costs.
1435. Inventory of an estate when deceased was member of a partnership.
1437. Delivery of co-partnership property, to whom made, bond required.
1438. Condition of bond.
1439. If surviving partners refuse to give bonds, who to administer on partnership estate.
1339. Executor so administering, to give further bond.
1440. Surviving partners to exhibit to appraisers, certain property of the firm.
1441. Penalty for breach of preceding section.
1442. Who are disqualified to become executors or administrators.
1443. When letters need not be taken out.

SEC. 1372. After the probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, letters of administration with the will annexed, shall be granted to the person to whom administration would have been granted if there had been no will.

SEC. 1373. Any person interested in a will may file objections in writing to the granting of letters testamentary, to the persons named as executors, or any of them, and the objection shall be heard and determined by the court.

SEC. 1374. If the executor be a minor, or absent from the territory, letters of administration with the will annexed shall be granted during the time of such minority or absence, to some other person, unless there be another executor, who shall accept the trust, in which case the estate shall be administered by such other executor, until the disqualification shall be removed. when such minor, having arrived at full age, or such absentee shall be admitted as joint executor with the former.

Sec. 1375. If, after letters of administration are granted, a will of the deceased be found, and probate thereof be granted, the letters shall be revoked and letters testamentary or of administration with will annexed, shall be granted.

Sec. 1376. If, after a will has been found and letters thereon granted, the will shall afterwards be set aside, the letters shall be revoked, and letters of administration granted on the goods unadministered.

Sec. 1377. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereby devolve on him, but the marriage shall extinguish her powers and the letters be revoked.

Sec. 1378. If an executor or administrator become of unsound mind, or be convicted of felony or infamous crime, or become an habitual drunkard, or otherwise incapable of or unsuitable for executing the trust reposed in him, or so fail to discharge his official duties, or waste or mismanage the estate, or so act as to endanger any co-executor or co-administrator, the probate court upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and if found to be just, shall revoke the letters granted.

Sec. 1379. No executor of an executor, shall, as such, be authorized to administer upon the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator left unadministered, shall be issued.

Sec. 1380. When all the executors named shall not be appointed by the court, such as are appointed shall have the same authority to perform every act, and discharge every trust required by the will, and their acts shall be as effectual for every purpose as if all were appointed and should act together.

Sec. 1381. Administrators with the will annexed shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

Sec. 1382. Letters testamentary and of administration with the will annexed shall be signed by the clerk of probate, and be under the seal of the court, and a copy of the will shall be attached to the letters.

Sec. 1383. Every adminstrator with the will annexed, and executor at the time letters are granted him, shall make an affidavit that he knows of no other and subsequent will of the deceased.

Sec. 1384. The judge of probate shall cause to be recorded in a well-bound book kept for that purpose, all letters testamentary and of administration, before they are delivered to the executors or administrators, and shall certify on such letters that they have been so recorded.

Sec. 1385. Copies of such letters, or copies of the records thereof, certified by the probate judge, and under the seal of the probate court, shall be received as evidence in any court in this territory.

Sec. 1386. Letters testamentary to be issued to executors under the provisions of this act, may be in the following form:

UNITED STATES OF AMERICA,
Territory of Washington.
In the probate court of the county of——.

Whereas the last will of A B, deceased, was on the — day of —, A. D., —, duly exhibited, proven and recorded in our said probate court, a copy of which is hereto annexed; and whereas it appears in and by said will, that C D is appointed executor thereon, now therefore, know all men by these presents, that we do hereby authorize the said C D to execute said will according to law.

Witness my hand and the seal of said court this —day of—, A. D., 18—.

SEC. 1387. Letters of administration with the will annexed, may be substantially in the following form:

UNITED STATES OF AMERICA,
Territory of Washington.
In the probate court of the county of ———.

The last will of A B, deceased, a copy of which is hereunto annexed, having been proved and recorded in the said probate court, and ——, (as the case may be) ——, C D is hereby appointed administrator with the will annexed.

Witness my hand and the seal of said court this — day of —, A. D., 18—.

SEC. 1388. Administration of the estate of a person dying intestate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

1. The surviving husband, or wife, or such person as he or she may request to have appointed.

2. The next of kin in the following order: 1. Child or children; 2. Father or mother; 3. Brothers or sisters; 4. Grandchildren.

3. To one or more of the principal creditors: *Provided*, That if the persons so entitled or interested shall neglect for more than forty days after the death of the intestate to present a petition for letters of administration, or if there be no relatives or next of kin, or if the heirs or one or more of the principal creditors, in writing, waive their right to administration, or if there be no principal creditor or creditors, then the probate court or judge may appoint any suitable and competent person to administer such estate.

SEC. 1389. Application for letters of administration shall be made by petition in writing, signed by the applicant or his attorney, and filed in the probate court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and such applicant, at the time of making such application, shall make an affidavit stating, to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased, and that the deceased died without a will.

SEC. 1390. A similar affidavit, with such variations as the case may require, shall be made by administrators of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the granting of letters of administration.

SEC. 1391. When a petition praying for letters of administration is filed, the clerk must give notice thereof, by causing notices to be posted in at least three public places in the county, one of which must be at the place where the court is held, containing the name of the decedent, the name of the applicant, and the term of the court at which the application will be heard. Such notice must be given at least ten days before the hearing.

SEC. 1392. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:

UNITED STATES OF AMERICA, }
Territory of Washington. }

Whereas, A B, late of —, on or about the — day of —, A. D., —, died intestate, leaving at the time of his death, property in this territory subject to administration. Now, therefore, know all men by these presents, that we do hereby appoint —— administrator upon said estate, and hereby authorize him to administer the same according to law.

Witness my hand and the seal of said court this — day of —, A. D., 18—.

SEC. 1393. Before letters testamentary or of administration are issued to the executor or administrator he must take and subscribe an oath before some person authorized to administer oaths, that he will perform according to law, the duties of his trust as executor or administrator, which oath must be attached to and recorded with the letters.

SEC. 1394. Every person to whom letters testamentary or of administration are directed to issue must before receiving them, execute a bond to the territory of Washington with two or more sufficient sureties to be approved by the probate judge. In form the bond must be joint and several, and the penalty must not be less than twice the value of the personal property, and twice the probable value of the annual rents, profits and issues of the real property belonging to the estate; which values must be ascertained by the probate judge by examining on oath the party applying, and any other persons.

SEC. 1395. The probate judge must require an additional bond, whenever the sale of any real estate belonging to an estate is ordered by him; but no such additional bond must be required when it satisfactorily appears to the court, that the penalty of the bond given, before receiving letters, or of any bond given in place thereof, is equal to twice the value of the personal property remaining in or that may come into the possession of the executor or administrator, including the annual rents, profits and issues of real estate and twice the probable amount to be realized on the sale of the real estate ordered to be sold.

SEC. 1396. The bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

SEC. 1397. When two or more persons are appointed executors or administrators, the probate judge must require and take a separate bond from each of them.

SEC. 1398. The bond shall not be void upon the first recovery, but may be sued and recovered upon from time to time, by any person aggrieved in his own name, until the whole penalty is exhausted.

SEC. 1399. In all cases where bonds or undertakings are required to be given under this title the sureties must possess the qualifications and justify thereon in the same manner as required by the civil practice act for bail upon an arrest and the certificate thereof must be attached to and filed and recorded with the bond or undertaking. All such bonds or undertakings must be approved by the probate judge before being filed or recorded.

Sec. 1400. Before the probate judge approves any bond required under this title, and after its approval, he may of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause notice to be issued to the executor or administrator, requiring his appearance on the return of the citation, and on its return he may examine the sureties and such witnesses, as may be produced touching the property of the sureties and its value; and if upon such examination he is satisfied that the bond is insufficient he must require sufficient additional security.

Sec. 1401. Such additional bond when given and approved, shall discharge the former sureties from any liability arising from the misconduct of the principal after the filing of the same, and such former securities shall only be liable for such misconduct as happened prior to the giving such new bond.

Sec. 1402. If sufficient security is not given within the time fixed by the judge's order the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who shall execute a sufficient bond must be appointed to the administration.

Sec. 1403. When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue and sale of real estate be made and confirmed without any bond, unless the court for good cause require one to be executed, but the executor may at any time afterwards, if it appear from any cause necessary or proper, be required to file a bond, as in other cases.

Sec. 1404. Any person interested in an estate may by verified petition represent to the probate judge that the sureties of the executor or administrator thereof, have become or are becoming insolvent, or that they have removed, or are about to remove from the territory, or from any other cause the bond is insufficient, and ask that further [security] be required.

Sec. 1405. If the probate judge is satisfied that the matter requires investigation citation must be issued to the executor or administrator, requiring him to appear, at a time and place specified, to show cause why he should not give further security. The citation must be served personally on the administrator or executor, at least five days before the return day. If he has absconded, or cannot be found, it may be served by leaving a copy of it at his last place of residence, or by such publication as the court or judge may order.

Sec. 1406. On the return of the citation, or at such other time as the judge may appoint, he must proceed to hear the proof and allegations of the parties. If it satisfactorily appears that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time, not less than five days.

SEC. 1407. If the executor or administrator neglects to comply with the order within the time prescribed, the judge must by order revoke his letters, and his authority must thereupon cease.

SEC. 1408. When it comes to his knowledge that the bond of any executor or administrator is, from any cause insufficient, the probate judge, without any application, must cause him to be called to appear and show cause, why he should not give further security, and must proceed thereon as upon the application of any person interested.

SEC. 1409. No judge of the probate court, no sheriff, clerk of a court, or deputy of either, and no attorney at law, shall be taken as security in any bond required to be taken in proceeding in probate courts.

SEC. 1410. The judge of the probate court shall take special care to take as securities, men who are solvent and sufficient, and who are not bound in too many other bonds; and to satisfy himself, he may take testimony, and examine, on oath, the applicant or person offered as security.

SEC. 1411. The judge of the probate court shall cause his clerk to record in a well-bound book, kept for that purpose, all bonds given by executors and administrators, and preserve the originals in regular file.

SEC. 1412. No bond required under the provisions of this act, and intended as such bond, shall be void for want of form or substance, recital, or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect, in the same manner as though it were a perfect bond.

SEC. 1413. The application, and acts, authorized by the foregoing sections may be heard and determined in term time, or in vacation. All orders made therein must be entered upon the minutes of the court.

SEC. 1414. Whenever the probate judge has reason to believe from his own knowledge, or from credible information, that any executor or administrator has wasted, embezzled or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge or has committed, or is about to commit a fraud upon the estate, or is incompetent to act, or has permanently removed from the territory, or has wrongfully neglected the estate, or has long neglected to perform any acts as such executor or administrator, he must by order entered upon the minutes of the court suspend the powers of such executor or administrator, until the matter is investigated.

SEC. 1415. When such suspension is made, notice thereof must be given to the executor or administrator, and he must be cited to appear and show [cause] why his letters should not be revoked. If he fail to appear in obedience to the citation, or if appearing the court is satisfied that there exists cause for his removal, his letters must be revoked, and letters of administration granted anew as the case may require.

SEC. 1416. At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed, to which the executor or administrator may demur or answer.

SEC. 1417. If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the territory, notice may be given him of the pendency of the proceedings by publication, in such manner as the court may direct, and the court may proceed upon such notice, as if the citation had been personally served.

Sec. 1418. In the proceedings authorized by the preceding section for the removal of an executor or administrator, the court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and upon his refusal so to do, may commit him to jail, until he obey, or may revoke his letters, or both.

Sec. 1419. When by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge of the probate court may, in his discretion, appoint a special administrator, (other than one of the parties,) to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator, he shall, nevertheless, proceed in the execution of his trust, until he shall be otherwise ordered by the district court to which such appeal is taken.

Sec. 1420. Every such administrator shall, before entering on the duties of his trust, give bond with sufficient surety or sureties, in such sum as the judge of the probate court shall order, payable to the territory of Washington, with condition as required of an executor, or in other cases of administration, to make and return into the probate court as soon as practicable, a true inventory of the goods, chattels, rights and credits of the deceased, which have or shall come into his possession or knowledge; and that he will truly account for all the goods, chattels, debts and effects of the deceased that shall be received by him as special administrator, whenever required by the probate court, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

Sec. 1421. Such special administrator shall collect all the goods, chattels and debts of the deceased and preserve the same for the executor or administrator who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the probate court shall order sold, and he shall be allowed such compensation for his service as the said court shall deem reasonable.

Sec. 1422. Upon granting letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the goods, chattels, money and effects of the deceased in his hands, and the executor or administrator may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator *de bonis non* is authorized to prosecute a suit commenced by a former executor or administrator.

Sec. 1423. Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted.

Sec. 1424. The special administrator shall also render an account under oath of his proceedings, in like manner as other administrators are required to do.

Sec. 1425. If any executor or administrator, having first settled his accounts, shall publish for six weeks in some newspaper in this territory in general circulation in the county wherein his letters were granted, a notice of his intention to apply to the probate court to resign his letters, and the court on proof of such publication believe that he should be permitted to resign, it shall so order.

Sec. 1426. Such person shall then surrender his letters, his power from that time shall cease, and he shall pay the expense of publication and of all the procedings on such application.

Sec. 1427. If there be more than one executor or administrater of an estate, and the letters to part of them be revoked or surrendered, or a part die or in any become disqualified, those who remain shall perform all the duties required by law.

Sec. 1428. If the executor or administrator of an estate shall die, resign, or the letters be revoked before the settlement of the estate, letters of administration of the goods remaining unadministered, shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the administrator *de bonis-non* shall perform the like duties and incur the like liabilities as the former executors or administrators.

Sec. 1429. If any executor or administrator resign or his letters be revoked, or he die, he or his representatives shall account for, pay and deliver to his successor, or to the surviving or remaining executor or administrator, all money and property of every kind, and all rights, credits, deeds, evidences of debt and papers of every kind of the deceased, at such time and in such manner as the court shall order, on final settlement with such executor or administrator or his legal representatives.

Sec. 1430. The succeeding administrator, or remaining executor or administrator, may proceed by law against any delinquent former executor or administrator, or his legal representatives, or the securities of either, or against any other person possessed of any part of the estate.

Sec. 1431. All suits against securities shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal.

Sec. 1432. If any executor or administrator fail to make either annual or final settlement as required by law, and do not show good cause for such failure, after having been cited for that purpose, the probate court shall order such executor or administrator to make such settlement and may enforce obedience to such order by attachment, and may revoke his letters.

Sec. 1433. If any person who has surrendered his letters testamentary or of administration, or whose letters have been revoked, or the legal representatives of any deceased executor or administrator shall fail to make final settlement as required by law, after being cited for that purpose by the probate court, it shall order such delinquent to make such settlement, and may enforce obedience to such order by attachment.

Sec. 1434. In all cases where citations or attachments may be issued against any executor, administrator or other person for failing to settle his accounts, such delinquent shall pay all costs incurred thereby, the collection of which costs may be enforced by attachment.

SEC. 1435. The executor or administrator of a deceased person who was a member of a co-partnership, shall include in the inventory of such person's estate, in a separate schedule, the whole of the property of such partnership; and the appraisers shall estimate the value thereof, and also the value of such person's individual interest in the partnership property, after the payment or satisfaction of all the debts and liablilities of the partnership.

SEC. 1436. After the inventory is taken, the partnership property shall be in the custody and control of the executor or administrator for the purposes of administration, unless the surviving partner shall within five days from the filing of the inventory, or such further time as the court may allow, apply for the administration thereof, and give the bond therefor hereinafter prescribed.

SEC. 1437. If the surviving partner apply therefor, as provided in the last section, he is entitled to the administration of the partnership estate, if he have the qualifications and competency required for a general administrator. He is denominated an administrator of the partnership, and his powers and duties extend to the settlement of the partnership business generally, and the payment or transfer of the interest of the deceased in the partnership property remaining after the payment or satisfaction of the debts and liabilities of the partnership, to the executor or general administrator within six months from the date of his appointment, or such further time, if necessary, as the court may allow. In the exercise of his powers and the performance of his duties, the administrator of the partnership is subject to the same limitations and liabilities, and control and jurisdiction of the court as a general administrator.

SEC. 1438. The bond of the administrator of the partnership shall be in a sum not less than double the value of the partnership property, and shall be given in the same manner and be of the same effect as the bond of a general administrator.

SEC. 1439. In case the surviving partner is not appointed administrator of the partnership, the administration thereof devolves upon the executor or general administrator, but before entering upon the duties of such administration, he shall give an additional bond in double the value of the partnership property.

SEC. 1440. Every surviving partner, on the demand of an executor or administrator of a deceased partner, shall exhibit and give information concerning the property of the partnership at the time of the death of the deceased partner, so that the same may be correctly inventoried and appraised; and in case the administration thereof shall devolve upon the executor or administrator, such survivor shall deliver or transfer to him on demand, all the property of the partnership, including all books, papers and documents pertaining to the same, and shall afford him all reasonable information and facilities for the performance of the duties of his trust.

SEC. 1441. Any surviving partner who shall refuse or neglect to comply with the requirements of the last section, may be cited to appear before the court and unless he show cause to the contrary, the court shall require him to comply with such section in the particular complained of.

SEC. 1442. The following persons are not qualified to act as executors or administrators: Non-residents of this territory, minors, judicial officers other than justices of the peace, persons of unsound mind or who have been convicted of any felony or of a misdemeanor involving moral turpitude, or a married woman. And when any person to whom letters testamentary or of administration have been issued, becomes disqualified to act because of leaving the territory, becoming of unsound mind, or is convicted of any crime or misdemeanor involving moral turpitude, or of a woman and she ceases to be single, the probate court having jurisdiction shall revoke his or her letters as in this act provided.

SEC. 1443. In all cases where it is provided in the last will and testament of the deceased, that the estate shall be settled in a manner provided in such last will and testament, and that letters testamentary or of administration shall not be required, it shall not be necessary to take out letters testamentary or of administration, except to admit to probate such will in the manner required by existing laws, and after the probate of such will, all such estates may be managed and settled without the intervention of the probate court, if the said last will and testament so provides: *Provided, however.* In all such cases, if the party named in such will as executor shall decline to execute the trust, or shall [die] or be otherwise disabled from any cause from acting as such executor, then letters testamentary or of administration shall issue as in other cases: *And provided, further,* If the party named in the will shall fail to to execute the trust faithfully and to take care and promote the interests of all parties taking under the will, then upon petition of any creditor of such estate, or of any of the heirs, or of any person on behalf of any minor heirs, it shall be the duty of the probate court of the county wherein such estate is situated, to cite such person having the management of such estate to appear before such court, and if, upon hearing of such petition, it shall appear that the trust in such will is not faithfully discharged, and that the parties interested or any of them have been or are about to be damaged by such acts or doings of the executor, then letters testamentary or of administration shall be had and required in such cases, and all other matters and proceedings shall be had and required as are now required in the administration of estates, and in such cases, the costs of the citation and hearing shall be charged against the party failing and neglecting to execute the trust as required in such will.

## CHAPTER CII.

### OF THE INVENTORY AND EFFECTS OF DECEASED PERSONS.

SECTION
1444. rights and duties of executors or administrators.
1445. Executors, etc., to return inventory of real and personal estate.
1446. Such estate to be appraised, and compensation of the appraisers.
1447. Appraisers to take an oath and inventory, what to contain.
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SECTION
1452. Penalty for neglect to return inventory.
1453. New assets discovered, to be appraised and inventoried.
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1456. Proceedings in case of suspected embezzlement, etc.
1457. Penalty in case suspected party refuses, upon citation to appear.
1458. Persons entrusted with any part of estate, may be cited to appear.
1459. Penalty in case of refusal.
1459. When estate is less than $500 it may be assigned for support of family.

SEC. 1444. Every executor or administrator shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over, by order of the probate court, to the heirs or devisees, and shall keep in tenantable repair all houses, buildings and fixtures thereon, which are under his control.

Sec. 1445. Every executor and administrator shall make and return, upon oath, into the probate court, within one month after his appointment, a true inventory of the real and personal estate of the deceased, which shall come to his possession or knowledge.

Sec. 1446. The estate and effects comprised in the inventory, shall be appraised by three suitable disinterested persons, who shall be appointed by the probate court. If any part of the estate shall be in another county than that in which letters are issued, appraisers residing in such county may be appointed by the probate court having jurisdiction of the case, or if most advisable the same appraisers may act. Such appraisers shall receive as compensation for their services, three dollars per day, to be paid out of the estate, and when they have to go out of their county, mileage shall be allowed.

Sec. 1447. Before proceeding to the discharge of their duties, the appraisers shall take and subscribe an oath before any officer authorized to administer oaths, to be attached to the inventory, that they will honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability; they shall proceed to estimate and appraise the property, and set down each article separately, with the value thereof in dollars and cents, in figures opposite the respective articles. The inventory shall contain all the estate of the deceased, real and personal, a statement of all debts, partnership and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the endorsements thereon, if any, and their dates, and the sum which, in the judgment of the appraisers, may be collectable on each debt, interest or security.

Sec. 1448. The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the possession or knowledge of the executor or administrator; and if none shall come to his possession or knowledge, the fact shall be so stated in the inventory.

Sec. 1449. The naming of any person as executor in a will, or the appointment of any person as administrator, shall not operate as a discharge from any just claim which the testator or intestate had against the executor or administrator, but the claim shall be included in the inventory, and the executor and administrator shall be liable to the same extent as he would have been had he not been appointed executor or administrator.

Sec. 1450. The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory, and shall if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportions as other specific legacies.

SEC. 1451. The inventory shall be signed by the appraisers, and be verified by the oath of the executor or administrator to the effect that the inventory contains a true statement of all of the estate of the deceased, which has come to his possession or knowledge, and particularly of all moneys belonging to the deceased, and of all just claims of the deceased against the executor or administrator.

SEC. 1452. If any executor or administrator shall neglect or refuse to return the inventory within the period prescribed, or within such further time, not exceeding three months, as the court shall allow, the court shall revoke the letters testamentary or of administration; and the executor or administrator shall be liable on his bond to any party interested for the injury sustained by the estate through his neglect.

SEC. 1453. Whenever property not mentioned in an inventory shall come to the knowledge and possession of the executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an additional inventory to be returned, subscribed and sworn to as is provided in this chapter, as soon as practicable after the discovery thereof, and the making of such inventory may be enforced, after notice, by attachment to which may be added the revocation of the letters.

SEC. 1454. The personal estate of the deceased which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased, the expenses of the administration and the allowance to the family of the deceased, the whole, or so much as may be necessary of the real estate, may be sold for that purpose by the executor or administrator, in the manner prescribed in this act.

SEC. 1455. If any person before the granting of letters testamentary or administration, shall embezzle or alienate any of the moneys, goods, chattels or effects of any deceased person, he shall stand chargeable, and be liable to the action of the executor or administrator of the estate, in double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

SEC. 1456. If the executor, administrator, heir, legatee, creditor or other person interested in the estate of any deceased person shall complain to the probate court, on oath, that any person is suspected of having concealed, embezzled, smuggled, conveyed away or disposed of any moneys, goods, or chattels of the deceased, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings which contain evidence of, or tend to disclose the right, title, interest or claim of the deceased to any real or personal estate, or any claim, demand, or last will of the deceased, the said judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined, either before the probate court for the county where he may be found, or before the court issuing the order or citation; but in the latter case, if he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

SEC. 1457. If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him, touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he shall submit to the order of the court, and all such interrogatories and answers shall be in writing, and shall be signed by the party examined and filed in the probate court.

SEC. 1458. The probate court upon the complaint on oath of any executor or administrator, may cite any person who shall have been entrusted with any part of the estate of the deceased person, to appear before the said court, and may require such person to give a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other papers belonging to the estate, which shall have come to his possession in trust for such executor or administrator, and of his proceeding thereon; and if the person so cited shall refuse to appear and answer such account, the court may proceed against him as provided in the preceding section.

SEC. 1459. If by the return of any inventory of any intestate's estate, who died leaving a widow or minor children, it shall appear that the value of the estate does not exceed five hundred dollars, the probate court shall, by decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole estate, after the payment of the funeral expenses and expenses of administration, and there shall be no further proceedings in the administration, unless further estate be discovered.

## CHAPTER CIII.

### PROVISION FOR THE SUPPORT OF THE FAMILY.

SECTION
1460. Provision for widow and minor children until letters granted.
1461. On return of inventory, exempt property set apart for their use.
1461. Further allowance if property set apart be insufficient
SECTION
1462. Executor to pay such allowance in preference to other charges.
1463. How property set apart to be distributed.
1464. If no widow or minor children, how estate to be disposed of.

SEC. 1460. When a person shall die leaving a widow and minor child or children, the widow, child or children shall be entitled to remain in possession of the homestead, and of all the wearing apparel of the family, and of all the household furniture of the deceased; and if the head of the family in his or her lifetime had not complied with the provisions of the law relative to the acquisition of a homestead, the widow or the child or children shall be entitled to a homestead as now provided by law for the head of a family, and the same shall be set aside for the use of the child or children or widow on a petition by such widow or the guardian of such child or children.

SEC. 1461. Upon the return of the inventory, the court shall set apart for the use of the widow, minor child or children, all the property of the estate by law exempt from execution. If the amount thus exempt be insufficient for the support of the widow and minor child or children, the probate court shall make such further reasonable allowance out of the estate as may be necessary for the maintenance of the family according to their circumstances, during the progress in the settlement of the estate.

SEC. 1462. Any allowance made by the court in accordance with the provisions of the preceding section, shall be paid by the executor or administrator in preference to all other charges, except funeral charges and expenses of administration.

Sec. 1463. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow and no minor children, such property shall be the property of the widow; if he shall have left also a minor child or children, one-half to the widow, and the remainder to such child, or in equal shares to such children, if there are more than one; it there be no widow then the whole shall belong to the minor child or children.

Sec. 1464. If intestate leave no widow or minor children, all his estate shall be assets in the hands of the administrator, after payment of funeral expenses and expenses of administration, for the payment of the debts of the deceased, or distribution according to law.

## CHAPTER CIV.

### OF CLAIMS AGAINST THE ESTATE.

Section
1465. Notice to be given to creditors of deceased.
1466. Copy of notice with affidavit of printer to be filed in probate court.
1467. Claims barred if not presented within one year after notice.
1468. Claim to be supported by affidavit; vouchers may be required.
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1470. Claims allowed to be filed in court, and ranked among debts of estate.
1471. When a claim is presented by judge of probate, proceedings thereupon.
1472. Rejected claims, within what time holder to bring suit upon.
1473. Claim barred by statute of limitation, not to be allowed.
1474. Claim must be presented to executor, etc., before action brought.
1475. Time of vacancy in administration not included in limitation.
1476. Plaintiff in action pending, to present claim as in other cases.
1477. When part of claim allowed, to be stated in indorsement.
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1478. Effect of judgment against executor or administrator.
1479. Judgment rendered against testator, etc., no execution to issue after death; proviso as to liens on property.
1480. Doubtful claim may be referred.
1481. Proceedings upon reference, return of award, and exceptions thereto, compensation of referees.
1482. Claim by executor, etc.. against deceased, to be presented.
1483. Letters to be revoked on neglect to notify creditors.
1484. Statement of claims against estate.
1485. Proceedings in case of resignation or removal of executor or administrator.

Sec. 1465. Every executor or administrator shall immediately after his appointment cause to be published in some newspaper printed in the county, if there be one, it not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased to present them, with the necessary vouchers, within one year after the date of such notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the probate court shall deem necessary, but not less than once in a week for four successive weeks.

Sec. 1466. After the notice shall have been published, a copy thereof, together with the affidavit attached thereto, of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator in the probate court.

Sec. 1467. If a claim be not presented within one year after the first publication of the notice, it shall be barred.

Sec. 1468. Every claim presented to the administrator shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made there thereon, and that there are no offsets to the same to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

Sec. 1469. When a claim accompanied by the affidavit required in the preceding section has been presented to the executor or administrator, he shall endorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the judge of the probate court, who shall in the same manner indorse on it his allowance or rejection. If the executor or administrator reject the claim he shall notify the claimant forthwith of said rejection.

Sec. 1470. Every claim which has been allowed by the executor or administrator and the said judge, shall be filed in the probate court and be ranked among the acknowledged debts of the estate, to be paid in the course of the administration.

Sec. 1471. Any judge of a probate court may present a claim against the estate of any decedent for allowance, to the executor or administrator, and if the executor or administrator allows such claim, he shall in writing designate some judge of the probate court of an adjoining county, and the said judge shall have the same power to allow or reject it as he would have, had letters issued in his court; and the claimant shall have, in the event of his claim being rejected, all the rights incident to any other creditor against the estate.

Sec. 1472. When a claim is rejected by either the executor, administrator or the judge of probate court, the holder must bring suit in the proper court against the exector or administrator within three months after its rejection, otherwise the claim shall be forever barred.

Sec. 1473. No claim shall be allowed by the executor, administrator or probate court which is barred by the statute of limitations.

Sec. 1474. No holder of any claim against an estate shall maintain an action thereon, unless the claim shall have been first presented to the executor or administrator.

Sec. 1475. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

Sec. 1476. If any action be pending against the testator or intestate, at the time of his death, the plaintiff shall, in like manner present his claim to the executor or administrator for allowance or rejection, authenticated as in other cases; and no recovery shall be had in the action, unless proof be made of the presentment.

Sec. 1477. Whenever any claim shall have been presented to an executor or administrator and the judge of the probate court, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the executor or adminstrator, unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs.

Sec. 1478. The effect of any judgment rendered against any executor or administrator, shall be only to establish the claim, in the same manner as if it had been allowed by the executor or administrator and the probate court; and the judgment shall be, that the executor or administor pay, in due course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court, and no execution shall issue upon such judgment, nor shall it create a lien upon the property of the estate, or give the judgment creditor any priority of payment.

SEC. 1479. When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the executor or administrator as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration: *Provided*, *however*, That if it be a lien upon any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

SEC. 1480. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing with the claimant to refer the matter in controversy to some disinterested person, or persons, to be approved by the judge of the probate court. Upon filing the agreement in the probate court, the court shall enter an order referring the matter in controversy to the persons so selected.

SEC. 1481. The referee or referees having been sworn, shall proceed to hear and determine the case and make return thereof; and their award, if not excepted to, shall be entered as the decision of the probate court. If exceptions in writing are filed, the court shall proceed to determine the case in like manner as other claims are determined. The compensation of referees shall be the same as allowed to referees in the district court.

SEC. 1482. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be presented for allowance or rejection to the probate court, and its allowance by the judge shall be sufficient evidence of its correctness.

SEC. 1483. If the executor or administrator shall neglect for two months, after his appointment, to give notice to creditors as prescribed by this article, it shall be the duty of the court to revoke his letters.

SEC. 1484. At the same time at which the executor or administrator is required to return his inventory, he shall also return a statement of all claims against the estate which shall have been presented to him, when required by the court, and from time to time thereafter shall present a statement of claims subsequently presented to him; and in all such statements he shall designate the names of creditors, the nature of each claim, when it did or will become due, and whether it was allowed or rejected by him.

SEC. 1485. In case of resignation or removal for any cause of any executor or administrator, and the appointment of another or others after notice has been given by publication as required by law by such executor or administrator first appointed to persons to present their claims against the estate or be forever barred, it shall be the duty of the judge of the probate court to cause notice of such resignation or removal and such new appointment to be published two successive weeks in the same newspaper in which the original notice was published, if the publication of such paper is at the time continued, and if not, then in some other newspaper published in the territory; and said estate shall be closed up and settled within the year from the date of said original notice, unless further time be granted by the probate court as provided by law.

# CHAPTER CV.

## SALES OF PROPERTY BY EXECUTORS AND ADMINISTRATORS.

SECTION
1486. No sale valid, unless under order of court, unless otherwise provided by will.
1487. Applications for order of sale; how made; objections thereto.
1488. On return of inventory, perishable property, etc., to be sold.
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1491. Sales of personal property; how conducted.
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1493. When real estate may be sold; petition for order what to set forth.
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1505. Sale how, when and where to be made.
1506. Notice of adjournment of sale to be given.
1507. When sale is on credit, executor, etc., to take security.
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1508. Proceedings on order of sale to be returned.
1509. Objection to confirmation of sale; how made.
1510. Order confirming sale and directing conveyances.
1511. Conveyances, by whom executed; what to contain; effect thereof.
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1524. Of sale of such mortgaged property.
1525, Liability of executor, etc., for neglect, etc., in sale.
1526. Fraudulent sales by executors, etc.
1527. When will so directs, property may be sold without order of court.

SEC. 1486. No sale of any property shall be valid unless made under order of the probate court, unless otherwise provided by will.

SEC. 1487. All applications for orders of sale shall be by petition, in writing, in which shall be set forth the facts, showing the sale to be necessary, and upon the hearing, any person interested in the estate, may file his written objections, which shall be heard and determined.

SEC. 1488. At the term of the court at which the inventory is returned, the executor or administrator shall apply for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold, to pay the allowance made to the family of the deceased.

SEC. 1489. If claims against the estate have been allowed, and a sale of property shall be necessary for the payment of the expenses of the administration, he may also apply for an order to sell so much of the personal estate as shall be necessary.

SEC. 1490. If it appear to the court that a sale is necessary, it shall so order. In making such sale, the court shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or not specially bequeathed, to be first sold.

SEC. 1491. Sales of personal property shall be made at public auction, and after notice given for at least two weeks, which notice shall be given by notices posted in ten public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be stated the time and place of sale.

SEC. 1492. If it be made to appear to the satisfaction of the probate court, that it will be for the interest of the estate to allow the executor or administrator to sell some or the whole of the personal estate at private sale, the court may so order.

SEC. 1493. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family, and all the debts and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon the order of the probate court. To obtain such order he shall present a petition to the court, setting forth the amount of the personal estate that has come to his hands, and how much, if any, remains undisposed of, a list and the amounts of the debts outstanding against the deceased, as far as the same can be ascertained, a description of all the real estate of which the testator or intestate died seized, the condition and value of the respective lots and portions, the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same.

SEC. 1494. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the allowance to the family, the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole or some portion of the real estate, for the payment of such debts, the probate court shall thereupon make an order, directing all persons interested to appear at a time and place specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order shall not be granted to the executor or administrator to sell the real estate of the deceased, or so much thereof as shall be necessary, to pay such allowances, charges and debts.

SEC. 1495. A copy of such order to show cause, shall be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court shall order: *Provided, however*, If all persons interested in the estate shall signify, in writing, their assent to such sale, the notice may be dispensed with.

SEC. 1496. The probate court at the time and place appointed in such order, or at such other time to which the hearing may be adjourned, upon proof of the due service or publication of a copy of the order, or upon filing the consent in writing, to such sale, of all parties interested, shall proceed to the hearing of such petition; and if such consent be not filed, shall hear and examine the allegation and proofs of the petitioners and of all persons interested in the estate, who may oppose the application.

SEC. 1497. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, the copy of the order shall be served on the guardian. If they have no such guardian, the court shall, before proceeding to act on the petition, appoint some disinterested person their guardian for the sole purpose of appearing, for them and taking care of their interests in the proceedings.

SEC. 1498. The executor or administrator may be examined under oath, and witnesses may be examined by either party, and process may be issued to compel their attendance and testimony, by the probate court, in the same manner and with like effect as in other cases.

SEC. 1499. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part the residue of the estate or some specific part or piece thereof would be greatly injured, the court may authorize the sale of the whole estate, or of such part thereof as may be adjudged necessary, and most to the interest of all concerned.

SEC. 1500. If the probate court shall be satisfied after a full hearing upon the petition, and on examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of the allowance to the family, and all valid claims against the estate and charges of administration, or, if such sale be assented to by all the parties interested, he shall make an order of sale authorizing the executor or administrator to sell the whole or so much and such parts of the real estate described in the petition as he shall judge necessary or beneficial.

SEC. 1501. The order shall specify the lands to be sold and the terms of sale, which may be either for cash or on credit, and not exceeding six months, as the court may direct. If it appear that any part of such real estate has been devised and not charged in such devise with the payment of debts, the court shall order that part descended to heirs to be sold, before that so devised.

SEC. 1502. If the executor or administrator shall neglect to apply for an order of sale whenever it may be necessary, any person interested in the estate may make application therefor in the same manner as an executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing.

SEC. 1503. Upon making such order, the clerk of the probate court shall deliver it to the executor or administrator, who shall thereupon be authorized to sell the real estate as directed.

SEC. 1504. When a sale is ordered, notice of the time and place of sale shall be posted in ten of the most public places in the county where the land is situated, at least twenty days before the day of sale, and shall be published in some newspaper in this territory, in general circulation in said county, for three successive weeks next before such sale, in which notice the lands and tenements shall be described with proper certainty.

SEC. 1505. Such sale shall be in the county where the lands are situated, at public auction, between the hours of ten o'clock in the morning and the setting of the sun the same day; but if the executor or administrator shall deem it for the interest of all concerned that the sale should be postponed, he may adjourn it for any time not exceeding fourteen days.

SEC. 1506. In case of such adjournment notice thereof shall be given by a public proclamation at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice shall be given by posting or publishing as the time and circumstances may admit.

SEC. 1507. The executor or administrator shall, when the sale is on credit, take the note or notes of the purchaser for the purchase money, with surety, and mortgage on the property to secure their payment.

SEC. 1508. The executor or administrator making any sale of real estate shall, at the next term of the court thereafter, make a return of his proceedings to the probate court, who shall examine the same, and if he shall be of opinion that the proceedings were unfair, or that the sum bidden is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of expenses of a new sale, may be obtained, he shall vacate such sale and order another to be had, of which notice shall be given, and the sale shall be conducted in all respects as if no previous sale had taken place.

SEC. 1509. When the return of the sale is made any person interested in the estate may file written objections to the confirmation of the sale, and may be heard and produce witnesses in support of his objections.

SEC. 1510. If it appear to the court that the sale was legally made and fairly conducted, and that the sum bidden was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum as above specified, cannot be obtained, the court shall make an order confirming the sale and directing conveyances to be executed; and such sale, from that time, shall be confirmed and valid.

SEC. 1511. Such conveyances shall thereupon be executed to the purchaser by the executor or administrator. They shall refer to the original order authorizing a sale, and the order confirming the sale and directing the conveyance; and they shall be deemed to convey all the estate, rights and interest of the testator or intestate at the time of his death.

SEC. 1512. Before any order is entered confirming the sale, it shall be proven to the satisfaction of the probate court that notice of the sale was given, as herein prescribed, and the order of confirmation shall state that such proof was made.

SEC. 1513. When a testator shall have given any legacy by will that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with its debts and charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell his real estate for that purpose in the same manner and upon the same terms and conditions as are prescribed in this act, in case of a sale for the payment of debts.

SEC. 1514. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provision of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

SEC. 1515. When any division has been made, or any property directed to be sold, the executor or administrator with the will annexed, may proceed to sell without the order of the probate court; but he shall be bound as an administrator, to give notice of the sale, and to proceed in making the sale in all respects as if he were under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions; but in all cases he shall make return of the sale to the probate court, who shall vacate such sale unless the same shall appear in all respects to be made according to law in like manner as upon sales made by administrator.

SEC. 1516. If the provision made by the will or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this act.

SEC. 1517. The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration, and of the family, in proportion to the value or amount of the several devises or legacies, if there shall not be other sufficient estate, except that specific devises or legacies may be exempted if it appear to the court necessary to carry into effect the intention of the testator.

Sec. 1518. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee from whom the estate devised to him may be taken for the payment of the debts or expenses; and the probate court when distribution is made, shall by decree for that purpose, settle the amount of the several liabilities and decree how much each person shall contribute.

Sec. 1519. If the deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such lands under such contract, may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this act, in respect to lands of which he died seized, except as hereinafter provided.

Sec. 1520. Such sale shall be made subject to all payments that may thereafter become due on such contract, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the probate court until the purchaser shall have executed a bond to the executor or administrator for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in lands so contracted for, in double the whole amount of the payments thereafter to become due on such contract, with such sureties as the probate court shall approve.

Sec. 1521. Such bond shall be conditioned that the purchaser will make all payments for such land as shall become due, after the date of such sale, and will fully indemnify the executor or administrator and the person so entitled, against all demands, costs and charges and expenses by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required of the purchaser.

Sec. 1522. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interest of the deceased in the land sold at the time of the sale; and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living.

Sec. 1523. If any person die, having mortgaged any real or personal estate, and shall not have devised the same or provided for the redemption thereof by will, the probate court, upon the application of any person interested, may order the executor or administrator to redeem the estate out of the personal assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate and not injurious to creditors.

Sec. 1524. If such redemption be not deemed expedient, the court shall order such property to be sold at public sale, which sale shall be with the same notice, and conducted in the same manner as required in other cases of real estate provided for in this act, and the executor or administrator shall thereupon execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title and interest which the deceased would have had in the property had not the same been mortgaged by him, and the purchase money, after paying the expenses of the sale, shall first be applied to the payment and discharge of such mortgage, and the residue in due course of administration. If said sale of the mortgaged premises shall be insufficient to secure the mortgage debt, the mortgagee shall file a claim for balance, authenticated as other claims and payable in due course of administration.

SEC. 1525. If there shall be any neglect or misconduct in the proceedings of the executor or administrator in relation to any sale, by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

SEC. 1526. Any executor or administrator who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this act, shall be liable in double the value of the land sold, as damages, to be recovered in an action by the person or persons having an estate of inheritance therein.

SEC. 1527. When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the probate court, and, either at public or private sale, and with or without notice, as the executor may determine; but the executor must make return of such sales as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold such directions must be observed. In either case no title passes unless the sale is confirmed by the court.

## CHAPTER CVI.

### OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR, AND OF THE MANAGEMENT OF THE ESTATE.

SECTION
1528. Executor, etc., to take possession of decedent's estate.
1529. Rights of action of deceased, possessed by executor, etc
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1531 Action against executors, in tort by deceased.
1532. Action on bond of former executor or administrator.
SECTION
1533. Executors may compound with debtors of estate.
1534. Fraudulent conveyance by deceased may be avoided.
1535. When executor shall sue for benefit of creditors.
1536. Real estate recovered in said action to be sold.

SEC. 1528. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and collect all debts due to the deceased.

SEC. 1529. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by or against their respective testators or intestates.

SEC. 1530. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken, carried away or converted to his own use the goods of their testator or intestate in his lifetime, also may maintain actions for trespass committed on the estate of the deceased during his lifetime.

SEC. 1531. Any person, or his personal representatives, shall have an action against the executor or administrator of any estate or intestate who in his lifetime shall have wasted, destroyed, taken or carried away, or converted to his own use the goods and chattels of any such person, or committed any trespass on the real estate of such person.

SEC. 1532. Any administrator may in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor or of any former administrator of the same estate.

SEC. 1533. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator may, with the approbation of the probate court, compound with him and give him a discharge upon receiving a fair and just dividend of his effects.

SEC. 1534. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his lifetime have conveyed any real estate or any right or interest therein, with intent to defraud his creditors or to avoid any right, duty or debt of any person, or shall have so conveyed such estate, which deeds or conveyances by law are void as against creditors, the executor or administrator may, and it shall be his duty to, commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 1535. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of the creditors of the deceased; and the creditors making such applications shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the probate court shall direct.

SEC. 1536. The real estate so recovered shall be sold for the payment of debts in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the probate court, and the proceeds of all goods, chattels, rights and credits so recovered, shall be appropriated in payment of debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

## CHAPTER CVII.

### OF ACCOUNTS TO BE RENDERED BY EXECUTORS OR ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS.

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1569. Liability of executor to creditor not included in such order.
1570. Legacies when paid, and estate distributed.
1571. Executor, etc., to render final account.
1572. Proceedings if he neglect to render same.

SEC. 1537. No executor or administrator shall be chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose or some memorandum or note thereof is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

SEC. 1538. Every executor or administrator shall be chargeable in his accounts with the whole estate of the deceased which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with the interest, profit and income of the estate.

SEC. 1539. He shall not make profit by the increase nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He shall account for the excess when he shall have sold any part of the estate for more than the appraisement, and if any has been sold for less than the appraisement he shall not be responsible for the loss if the sale has been justly made.

SEC. 1540. No executor or administrator shall be accountable for any debts due the estate if it shall appear that they remain uncollected without his fault.

SEC. 1541. He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as the law provides, but when the deceased, by will, shall have made some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall by a written instrument, filed in the probate court, renounce all claim for compensation provided by the will.

SEC. 1542. No administrator or executor shall purchase any claim against the estate he represents, and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account so much as he shall have actually paid.

SEC. 1543. When no compensation shall have been provided by will, or the executor shall renounce his claim thereto, he shall be allowed commission on the whole estate accounted for by him as follows: For the first one thousand dollars, at the rate of seven per cent.; for all above that sum and not exceeding two thousand dollars, at the rate of five per cent.; for all above that sum, at the rate of four per cent., and the same commission shall be allowed to administrators. In all cases such further allowance may be made as the probate court shall deem just and reasonable for any extraordinary services not required of an executor or administrator in the common course of his duty: *Provided*, That the total amount of such allowance shall not exceed the amount of commission allowed in this section.

SEC. 1544. Within six months after his appointment, and thereafter at any time when required by the court, either upon its own motion or the application of any person interested in the estate, the executor or administrator shall render for the information of the court an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

Sec. 1545. If the executor or administrator fail to render an exhibit within six months, as required in the last preceding section, it shall be the duty of the probate court to issue a citation requiring him to appear and render it.

Sec. 1546. Any person interested in the estate may at any time before the final settlement of accounts, present his petition to the probate court praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit shall be made.

Sec. 1547. If the probate court be satisfied, either from the oath of the applicant or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, a citation shall be issued to the executor or administrator requiring him to appear on some day named in the citation, which shall be during the term of a court, and render an exhibit as prayed for.

Sec. 1548. When an exhibit is rendered by an executor or administrator, any person interested may appear, and by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he have been guilty of negligence, or wasted, embezzled or mismanaged the estate, his letters shall be revoked.

Sec. 1549. If any executor or administrator neglect or refuse to appear and render an exhibit after having been duly cited, an attachment may be issued against him, or his letters may be revoked, in the discretion of the court.

Sec. 1550. Every executor or administrator shall render a full account of his administration at the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the court to compel the rendering of such account by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation shall have been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue.

Sec. 1551. Whenever the authority of an executor or administrator shall cease, or be revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the estate, in like manner as he might have been cited by any person interested in the estate, during the time he was administrator or executor.

Sec. 1552. If the executor or administrator resides out of the county, or absconds or conceals himself so that the citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after having been committed where the attachment has been executed, his letters shall be revoked.

Sec. 1553. In rendering his account the executor or administrator shall produce vouchers for the expenses and charges which he shall have paid, which vouchers shall be filed and remain in court; and he may be examined on oath touching such payments, and also touching any property and effects of the deceased, and the disposition thereof.

Sec. 1554. On the settlement of his account, he may be allowed any item of expenditure not exceeding twenty dollars for which no voucher is produced, if such item be supported by his own oath, positive to the fact of payment, specifying when, where, and to whom payment was made, if such oath be uncontradicted; but such allowances, in the whole, shall not exceed three hundred dollars for payment in behalf of any one estate.

Sec. 1555. Executors and administrators of the estates of deceased persons are hereby authorized by and with the consent of the probate court of the proper county, to expend a reasonable sum out of the estate of the decedent, to erect a monument, or tombstone, suitable to mark the grave of said decedent, and the expense thereof shall be paid as expenses of administration are paid.

Sec. 1556. When the account is rendered for settlement, notice for the hearing and settlement thereof shall be given by the probate judge by causing notices to be posted in three of the most public places in the county, at least twenty days before the time appointed for such settlement. The notice shall set forth the name of the estate, of the executor or administrator, and the day appointed for the settlement of account, which shall be on some day of a regular term of court. The court may order such further notice to be given as he may deem proper.

Sec. 1557. On the day appointed, or on any subsequent day to which the hearing may have been adjourned by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

Sec. 1558. If there be any minor interested in the estate, who has no legally appointed guardian, the court shall appoint some disinterested person to represent him, who, on behalf of the minor, may contest the account, as any other person interested might contest it, and who shall be allowed by the court a reasonable compensation for his services.

Sec. 1559. The hearing and allegations of the respective parties may be adjourned from time to time as shall be necessary.

Sec. 1560. The settlement of the account and the allowance thereof by the court, or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, the right to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall have ceased, and in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

Sec. 1561. The account shall not be allowed by the court until it be first proven that notice has been given as required by this act, and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

Sec. 1562. The debts of the estate shall be paid in the following order: 1. Funeral expenses. 2. Expenses of the last sickness. 3. Debts having preference by the laws of the United States. 4. Taxes or any dues to the territory. 5. Judgments rendered against the deceased in his lifetime on which execution might have issued at the time of his death, and mortgages in the order of their date. 6. All other demands against the estate.

Sec. 1563. The preference given in the preceding section to a mortgage, shall only extend to the proceeds of the property mortgaged; if the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

Sec. 1564. If the estate be insufficient to pay the debts of any one class, each creditor shall be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all those of the preceding class shall have been fully paid.

Sec. 1565. It shall be the duty of the executor or admintstrator, as soon as he may have sufficient funds in his hands, to pay the funeral expenses, and expenses of the last sickness, and the allowance made to the family of the deceased, and he may retain in his hands the necessary expenses of administration, but he shall not be obliged to pay any other debt or any legacy, until as prescribed by this act, the payment has been ordered by the court.

Sec. 1566. Upon the settlement of the accounts of the executor or administrator at the end of the year, as required by this act, the court shall make an order for the payment of the debts, as the circumstances of the estate shall require. If there be not sufficient funds in the hands of the executors or administrators, the court shall specify in the decree the sum to be paid each creditor.

Sec. 1567. If there be any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to if the claim were due, established, or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed, as the circumstances of the case may require: *Provided*, That if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a reduction therefrom of the legal interest for the time the claim has yet to run he shall be entitled to be paid accordingly.

Sec. 1568. Whenever a decree shall have been made by the probate court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon; and the execution may be issued on such decree, as upon a judgment of the district court in favor of each creditor; and the same proceedings may be had under such execution, as if it had been issued from the district court. The executor or administrator shall be liable on his bond to each creditor.

Sec. 1569. When the accounts of the executor or administrator have been settled, and an order made for the payment of the debts and distribution of the estate, no creditor whose name was not included in the order of payment, shall have any right to call upon the creditors who have been paid, or upon the heirs, legatees or devisees to contribute for the payment of his claim; but if the executor or administrator shall have failed to give the notice to creditors as prescribed in this act, such creditor may recover on the bond of the executor or administrator, the amount of his claim, or such part thereof as he would have been entitled to, had it been allowed: *Provided*, That this section shall not apply to any creditor whose claim was not due one year before the day of settlement, or whose claim was contingent and did not become absolute, one year before such day.

SEC. 1570. If all the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies, and the distribution of the estate among the heirs, legatees, or other persons entitled; but if there be debts remaining unpaid, the court shall give such extension of time as may be reasonable, for the final settlement of the same.

SEC. 1571. At the time designated, or sooner, if within that time all property of the estate shall have been sold, or there shall be sufficient funds in his hands to pay all the debts due by the estate, the executor or administrator shall render a final account and pray a settlement of the estate.

SEC. 1572. If he neglect to render his account the same proceedings may be had as are prescribed in this act, in regard to the first account to be rendered by him, and all the provisions of this act relative to the last mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

## CHAPTER CVIII.

### *OF THE PARTITION AND DISTRIBUTION OF THE ESTATE.*

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1600. Liability of agent.
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1602. When court to discharge executor, etc., from future liability.
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SEC. 1573. At any time subsequent to the second term of the probate court, after the issuing letters testamentary or of administration, any heir, legatee, or devisee, may present his petition to the court, that the legacy or share of the estate, to which he is entitled, may be given to him upon his giving bonds with security for the payment of his proportion of the debts of the estate.

SEC. 1574. Notice of the application shall be given to the executor or administrator, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of the executor or administrator.

Sec. 1575. The executor, administrator, or any person interested in the estate, may appear and resist the application; or any other heir, legatee, or devisee, may make a similar application for himself.

Sec. 1576. If, on the hearing, it appear to the court that the estate is but little in debt, and that the share of the parties applying, may be allowed without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants: *Provided*, Each one of them shall first execute and deliver to the executor or administrator, a bond in such sum as shall be designated by the probate court, and with sureties to be approved by the judge thereof, to the executor or administrator, conditioned for the payment by the devisee or legatee, whenever required, of his proportion of the debts due from the estate.

Sec. 1577. Such decree may order the executor or administrator to deliver to the heir, devisee or legatee, the whole portion of the estate to which he may be entitled, or only a part thereof.

Sec. 1578. If, in the execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

Sec. 1579. The costs of the proceedings authorized by the preceding section, shall be paid by the applicant, or if there be more than one, shall be equally apportioned among them.

Sec. 1580. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate, to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the court, if satisfied of the necessity of the payment, shall make an order accordingly, designating the amount and giving the time within which it shall be paid; and if the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Sec. 1581. Upon the settlement of the account of the executor or administrator or at any subsequent time, upon the application of the executor or administrator, or any heir, devisee or legatee, the court shall proceed to distribute the residue of the estate among the persons who are by law entitled.

Sec. 1582. In the decree the court shall name the person and the portion or part to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession.

Sec. 1583. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given in the manner required in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given as it may deem proper.

Sec. 1584. When the estate, real or personal, assigned to two or more heirs, devisees or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the probate court, who shall be duly sworn to the faithful discharge of their duties, and the court shall issue a warrant to them for that purpose.

SEC. 1585. If the real estate be in different counties, the probate court may, if it shall judge proper, appoint different commissioners for each county; and in such cases the estate in each county shall be divided separately, as if there were no other estate to be divided, but the commissioners first appointed shall, unless otherwise directed by the probate court, make division of such real estate wherever situated within the territory.

SEC. 1586. Such partition and distribution may be ordered on the petition of any of the persons interested in the estate; but before any partition shall be ordered, as directed in this act, notice shall be given to all persons interested who shall reside in this territory, or to their guardians and to agents, attorneys or guardians, if there be any in this territory, of such as reside out of the territory, either personally or by public notice, as the probate court may direct.

SEC. 1587. Partition of the real estate may be made as provided in this act, although some of the original heirs or devisees may have conveyed their shares to other persons, and such shares shall be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs or devisees.

SEC. 1588. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes, bounds and descriptions, that the same may be easily distinguished, unless two or more of the parties shall consent to have their shares set out so as to be held by them in common and undivided.

SEC. 1589. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to share therein, who will accept it, providing the party so accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, and the true value of the estate shall be ascertained by the commissioners appointed by probate court, and sworn for that purpose.

SEC. 1590. When any tract of land or tenement shall be of greater value than either party's share of the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding sections; providing the party so accepting shall pay or secure to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

SEC. 1591. When it cannot be otherwise fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, and distribute the proceeds.

Sec. 1592. When partition of real estate among heirs or devisees shall be required, and such real estate shall be undivided and in common with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common; and such division, so made and established by the probate court, shall be binding upon all the persons interested.

Sec. 1593. Before any partition shall be made, or any estate divided, as provided in this act, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the territory, and notice of the appointment of such agent shall be given to the commissioners in their warrant; and notice shall be given to all persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

Sec. 1594. The commissioners shall make a report of their proceedings in writing, and the court may, for sufficient reasons, set aside such report and remit the same to the same commissioners or appoint others; and the report, when finally accepted and established, shall be recorded in the records of the probate court, and a copy thereof attested by the judge, under the seal of the court, shall be recorded in the office of the county auditor in the county where the land lies.

Sec. 1595. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall have been decreed, or some of them, shall request that such partition be made.

Sec. 1596. All questions as to advancements made, or alleged to have been made by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners, and the final decree of the probate court, or in case of appeal, of the district or supreme courts, shall be binding on all parties interested in the estate.

Sec. 1597. When any estate shall have been assigned by decree of the court, or distributed by commissioners, as provided in this act, to any person residing out of this territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absentee in the partition and distribution.

Sec. 1598. Such agent shall give a bond to the county in which such estate shall be situated, to be approved by the court, conditioned faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Sec. 1599. When the estate shall have remained in the hands of the agent unclaimed for one year, it shall be sold under order of the court, and the proceeds, deducting the expenses of the sale, to be allowed by the court, shall be paid into the county treasury. When the payment is made the agent shall take triplicate receipts, one of which he shall file with the county auditor, and another with the probate court.

Sec. 1600. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of sale as required by the preceding section, and may be sued thereon by any person interested.

Sec. 1601. When any person shall appear and claim the money paid into the treasury, the probate court making the distribution, being first satisfied of his right, shall grant him a certificate under its seal, and upon the presentation of the certificate to the county auditor, he shall draw his warrant on the county treasurer for the amount.

Sec. 1602. When the estate has been fully administered, and it shall have been shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under order of the court, all property of the estate to the persons entitled, the court shall make a decree discharging him from all liability to be incurred thereafter.

Sec. 1603. The final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or it should become necessary and proper from any cause that letters should be again issued.

## CHAPTER CIX.

### THE APPOINTMENT AND DUTIES OF GUARDIANS.

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Sec. 1604. The probate court of each county, when it shall become necessary, may appoint guardians to minors resident in said county, who have no guardian appointed by will; or who may reside out of the territory, having estate within the county.

Sec. 1605. If the minor is under fourteen years of age, the judge may nominate and appoint his guardian; if said minor be over fourteen years of age, he or she may nominate the guardian, who, if approved by the probate court, shall be appointed accordingly: *Provided*, That no judicial officer, excepting justice of the peace, no person of unsound mind or a party convicted of felony, or a misdemeanor involving moral turpitude, shall be appointed guardian, and when a guardian shall incur either of the foregoing disabilities, he shall be displaced. If a guardian becomes probate judge, the district court of the proper county or district shall appoint his successor.

Sec. 1606. If the guardian nominated by the minor be not approved by the judge, or if the minor shall reside out of the territory, or if, after being duly cited by the court, he shall neglect for ten days to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.

Sec. 1607. When a guardian has been appointed for any minor under the age of fourteen, such guardian shall not be removed when such minor arrives at the age of fourteen, except for good cause shown.

Sec. 1608. The father of the minor if living, and in case of his decease, the mother, being themselves respectively competent to transact their own business, shall be entitled to the guardianship of a minor.

Sec. 1609. If the minor have no father or mother living, and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

Sec. 1610. Every guardian appointed as aforesaid shall have the custody and tuition of the minor, and the care and management of the estate of such minor, except as hereinafter provided, until he or she shall have attained the age of majority; and males shall be deemed of full and legal age when they shall be twenty-one years old, and females shall be deemed of full and legal age when they shall be eighteen years old, or at any age under eighteen, when, with the consent of the parent, or guardian, or other person under whose care or government they may be, they shall have been lawfully married.

Sec. 1611. Guardians, by virtue of their office as such, shall be allowed, in all cases to prosecute and defend for their wards.

Sec. 1612. The probate court shall take of each guardian appointed under this act, bond with approved security, payable to the territory of Washington, in a sum double the amount of the minor's estate, real and personal, conditioned as follows:

The condition of this obligation is such, that if the above bound A B, who has been appointed guardian for C D, shall faithfully discharge the office and trust of such guardian according to law, and shall render a fair and just account of his said guardianship to the probate court for the county of ———, from time to time, as he shall thereto be required by said court, and comply with all orders of said court, lawfully made, relative to the goods, chattels, and moneys of such minor, and render and pay to such minor all moneys, goods and chattels, title papers and effects which may come into the hands or possession of such guardian belonging to such minor, when such minor shall thereto be entitled, or to any subsequent guardian, should such court so direct, this obligation shall be void, or otherwise to remain in full force and virtue, which bond shall be for the use of such minor and shall not become void upon the first recovery, but may be put in suit from time to time against all, or any one or more of the obligors, in the name and [for] the use and benefit of any person entitled by a breach thereof, until the whole penalty shall be recovered thereon.

Sec. 1613. Probate courts shall have power in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time, to render their respective accounts, upon oath, touching their guardianship, to said courts for adjustment and shall have power to compel such guardian to give supplementary security, whenever it shall judge proper, and in default thereof to remove such guardian.

SEC. 1614. It shall be the duty of every guardian of any minor:

1. To make out and file, within three months after his appointment, a full inventory, verified by oath, of the real and personal estate of his ward, with the value of the same; and failing so to do, it shall be the duty of the court to remove him and appoint a successor.

2. To manage the estate for the best interest of his ward.

3. To render, on oath, to the proper court, an account of his receipts and expenditures as such guardian, verified by (such) vouchers or proof, at least once in every two years, or whenever cited so to do; he shall receive no allowance for services, and be liable to said ward on his bond, for ten per cent. in damages on the whole amount of estate, both real and personal, in his hands belonging to such ward.

4. At the expiration of his trust, fully to account for and pay over to the proper person, all the estate of said ward remaining in his hands.

5. To pay all just debts due from such ward out of the estate in his hands, and collect all debts due such ward, and in case of doubtful debts, to compound the same, and appear for and defend or cause to be defended, all suits against such ward.

6. When any ward has no father or mother, or such father or mother is unable, or fails to educate such ward, it shall be the duty of his guardian to provide for him such education as the amount of his estate may justify.

SEC. 1615. The probate court, may, on the application of a guardian or any other person, said guardian having due written notice thereof, order and decree any change to be made in the investment of the estate of any ward that may to such court seem advantageous to such estate.

SEC. 1616. The probate court in all cases, shall have power to remove guardians for good and sufficient reasons, which shall be entered of record, and to appoint others in their place or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed in this act; and when any guardian shall be removed, or die, and a successor be appointed, the court shall have power to compel such guardian to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such minor which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or of any other person or persons who have the same, and upon failure, to commit the party offending to prison, until he, she or they comply with the order of the court.

SEC. 1617. All the provisions of chapter 101 relative to bonds given by executors and administrators, shall apply to bonds taken of guardians.

SEC. 1618. The father of every legitimate child, who is a minor, may, by his last will in writing, appoint a guardian or guardians for his minor children, whether born at the time of making such will or afterwards, to continue during the minority of such child, or for any less time, and every such testamentary guardian shall give bond in like manner and with like condition as hereinbefore required, and he shall have the same powers and perform the same duties with regard to the person and estate of the ward, as a guardian appointed as aforesaid.

SEC. 1619. Nothing contained in this act shall affect or impair the power of any court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf.

Sec. 1620. Whenever necessary for the education, support or payment of the just debts of any minor, or for the discharge of any liens on the real estate of such minor, or whenever the real estate of such minor is suffering unavoidable waste, or a better investment of the value thereof can be made, the probate court may, on the application of such guardian, order the same or a part thereof to be sold.

Sec. 1621. Such application shall be by petition, verified by the oath of the guardian, and shall substantially set forth:

1. The value and character of all personal estate belonging to such ward that has come to the knowledge or possession of such guardian.
2. The disposition made of such personal estate.
3. The amount and condition of the ward's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.
4. The annual value of the real estate of the ward.
5. The amount of rent received and the application thereof.
6. The proposed manner of re investing the proceeds of the sale, if asked for that purpose.
7. Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.
8. The age of the ward, where and with whom residing.
9. All other facts connected with the estate and condition of the ward necessary to enable the court fully to understand the same. If there is no personal estate belonging to such ward, in possession or expectancy, and none has come into the hands of such guardian, and no rents have been received, the fact shall be stated in the application.

Sec. 1622. If it shall appear to the court from such petition and from the hearing thereon, that it is necessary, or would be beneficial to the ward that such real estate or some part of it should be sold, the court may authorize the said guardian to sell the same at public sale, on the same terms and notice required for sales of real estate by executors and administrators.

Sec. 1623. All the provisions of the chapter regulating sales by executors and administrators shall be applicable to sales made by guardians.

Sec. 1624. At the term of the court next after such sale, such guardian shall make report thereof to such court, and produce the proceeds of such sale, and the notes or obligations or other securities taken to secure the payment of the purchase money.

Sec. 1625. The court in confirming such sale and directing a conveyance, shall be governed by the law regulating the confirming of sales of real estate made by executors or administrators, and the making of conveyances on such sales.

Sec. 1626. The guardian of any minor may join in and assent to the partition of the real estate of such minor, under the direction of the court, upon a petition for partition.

Sec. 1627. Every guardian shall be allowed by the court, on settling his accounts, the amount of all reasonable expenses incurred in the execution of his trust, and also such compensation for his services as the court shall deem reasonable.

Sec. 1628. When the guardian and ward are both non-residents, and the ward is entitled to property in this territory, which may be removed to another state or territory, without conflict to any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the state or territory in which such ward may reside, upon the application of the guardian to the judge of the probate court of the county in which the estate of the ward, or the principal part thereof, may be, in the manner following: The guardian so applying must produce a transcript from the records of a court of competent jurisdiction, certified according to the laws of this territory, showing his appointment as guardian of the ward in the state or territory in which he and the said ward reside; that he has qualified as such according to the laws thereof, and given bond, with sureties, for the performance of his trust; and must also give thirty days' notice to the resident executor, administrator, guardian, agent or trustee, if there be such, of the applications. Thereupon, if no objection be made, or if no good cause be shown to the contrary, the judge of the probate court shall make an order granting such guardian leave to remove the property of said ward to the state or territory in which he or she may reside; which order shall be full and complete authority to said guardian to sue for and receive the same in his own name, for the use and benefit of said ward.

Sec. 1629. Sureties in the bond of any guardian may be discharged from liability therein, under the same rule and regulation prescribed for the discharge of the sureties in the bond of executors and administrators, and the provisions of this act regulating the same shall apply to guardians and guardians' bonds and sureties.

Sec. 1630. Appeals shall be allowed in all cases, from any order or judgment of the probate court to the district court, embracing the county exercising jurisdiction, in the same manner as provided in this act regarding executors and administrators and the settlement of estates.

## CHAPTER CX.

### RELATING TO IDIOTS AND INSANE.

Section
1631. Probate courts may appoint guardians, etc.
1632. Inquiry as to insanity of persons, and ability to bear expenses of keeping. Court may permit friends to take charge, when.
1633. In indigent cases counties liable.
1634. Paying patients shall comply with contract.
1635. Probate court to appoint guardian of estate.
1636. Ward's estate first liable, if sufficient, then county.
1637. When complainant shall be liable for costs.
1638. Bond and qualification of guardian.
1639. Notice of appointment shall be published.
1640. Guardian shall take possession of ward's estate.
1641. Exhibits of estate by guardian.
1641. Additional exhibit or inventory.
1642. Exhibit, how attested and verified.
1643. Guardians shall prosecute and defend actions for ward.
1644. Guardians to collect dues and pay debts of ward.

Section
1645. Powers of court over estate of ward.
1646. Real estate of ward may be sold, leased, mortgaged, etc.
1647. Orders of court touching such real estate.
1648. Guardian's act binds the ward.
1649. Court may set aside guardian's proceedings.
1650. Guardian to render account when required.
1651. Ward exempted from arrest, served on guardians.
1652. Recovery of reason by ward, discharges guardian.
1653. Expense of case to be paid out of estate; if that is not sufficient, then by territory.
1654. Territory may recover disbursements from any one who is bound by law to support insane person.
1655. Who are liable for support of insane persons.
1656. In case of death guardian's power ceases, estate to descend, etc.
1657. Court has power to remove guardian.

Sec. 1631. The several probate courts in their respective counties in this territory, shall have power to appoint guardians to take the care, custody and management of all idiots, insane persons, and all who are incapable of conducting their own affairs; and of their estates, real and personal; the maintenance of themselves and families, and the education of their children.

Sec. 1632. The probate court of any county in this territory, or the judge thereof, upon application of any person under oath, setting forth that any person by reason of insanity is unsafe to be at large, or is suffering under mental derangement, shall cause such person to be brought before said court or judge at such time and place as the court or judge may direct; and shall cause to appear at said time and place, one or more respectable physicians who shall state under oath in writing, their opinion of the case, which opinion shall be carefully preserved and filed with the other papers in the case; and if the said physician or physicians shall certify to the insanity or idiocy of said person, and it appear to the satisfaction of the court or judge that such is the fact, said court or judge shall cause such insane or idiotic person to be taken to and placed in the hospital for the insane in Washington territory: *Provided*, That such person or any person in his behalf, may demand a jury to decide upon the question of his insanity, and the court or judge shall discharge such person if the verdict of the jury is that he is not insane. Said court or judge shall also inquire as to the ability of such insane or idiotic person to bear the expense of his keeping in said hospital, and shall certify the result to the trustees of the hospital for the insane in Washington territory, and in case such person shall have sufficient means to bear such expense, said court or judge shall cause to be paid to the territorial treasurer the amount of two months' expenses in said hospital in advance and a like amount regularly every two months thereafter so long as such person remains under treatment in said hospital if he shall have means [sufficient] therefor: *Provided, however*, That if such person be the head of a family, no property that is by law exempt from execution or attachment for debt shall be taken to pay such expenses: *Provided*, That when the relations or friends desire to take charge of such insane or idiotic person the court or judge may so order, if they shall give bonds to be approved by said judge conditioned that such insane or idiotic person shall be well and securely kept.

Sec. 1633. The county shall, in all cases where the person is indigent, be at the expense of such conveyance to the asylum, and in the event of the death of such person, be chargeable with the funeral expenses: [*Provided*, That when such insane person is a resident of another county, the county wherein such proceedings were had shall recover from the county of which such insane person is a resident all costs and expenses.] [See sec. 2276.]

Sec. 1634. Paying patients, whose friends or whose property can pay their expenses shall do so in accordance with the contract made with the trustees of the institution; the charge in all cases shall be reasonable and in proportion to the amount of care and accommodation required by their friend or guardians.

Sec. 1635. If it be found by the court that the person so brought before the court, is of unsound mind and incapable of managing his own affairs, the court shall appoint a guardian for the estate of such insane person.

Sec. 1636. When any person shall be found to be insane, or coming within the provisions of this act, the cost of the proceedings shall be paid out of his estate, or, if that be insufficient, by the county.

Sec. 1637. If the person alleged to be insane shall be discharged and it shall be thought by the court that there were no grounds for such impression of insanity, then the cost shall be paid by the person at whose instance the proceeding was had, and execution may issue for the same.

Sec. 1638. Every such guardian so appointed, shall, before entering upon the duties assigned him, enter into bond to the board of county commissioners in such sum, and with such security as the court shall approve, conditioned that he will take proper care of such insane person, and manage and minister his effects to the best advantage, according to law; and that he will faithfully discharge all duties as such guardian which may by law, or by the order, sentence or decree of any court of competent jurisdiction, devolve upon him; which bond shall be filed in the office of the probate court; a copy thereof, duly certified, shall be evidence in all respects as the original.

Sec. 1639. It shall be the duty of every such guardian, within twenty days after his appointment, to cause notice thereof to be published in some newspaper printed in this territory, or otherwise publish such notice at such time and place, and in such manner as the court shall decide.

Sec. 1640. It shall be the duty of such guardian to collect and take into his possession the goods, chattels, moneys, effects and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship.

Sec. 1641. Within forty days after his appointment, such guardian shall make out and file in the office of the probate court, by which he was appointed, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, as the same shall have come to his knowledge. And if, after having filed such inventory, it shall be found that there is other property belonging to said estate, it shall be the duty of such guardian to make out and file an additional inventory, containing a just and full account of the same, from time to time, as the same may be discovered.

Sec. 1642. All such inventories shall be made in the presence of, and attested by two credible witnesses in the neighborhood, and shall be verified by the oath of the guardian.

Sec. 1643. It shall be the duty of every such guardian to prosecute all actions commenced at the time of his appointment, or thereafter, to be commenced by, or on account of his ward, and to defend all actions which may be brought against such ward.

Sec. 1644. Every such guardian is authorized and required to collect all debts due to his ward, and give acquittances and discharges thereof, and adjust, settle and pay all demands due and becoming due from his ward, so far as his estate and effects will extend.

Sec. 1645. Every probate court shall have power to make orders for the restraint, support and safe keeping of such person, for the management of his estate, and the support and maintenance of his family, and education of his children, out of the proceeds of his estate; to set apart and reserve, for the use of such family, all property, real or personal, not necessary to be sold for the payment of debts; and to let, sell or mortgage any part of such estate, real or personal, when necessary for the payment of debts, the maintenance of such insane person or his family, or the education of his children.

Sec. 1646. Whenever the personal estate of such person shall be found to be insufficient to meet the foregoing requisitions, it shall be the duty of such guardian to lay the same before the probate court by whom he was appointed, setting forth the particulars relative to the estate, real and personal, of such person, and the debts by him owing, accompanied by a correct and true account of his doings therewith; whereupon it shall be the duty of such court to make an order directing the mortgage, lease, or sale at his discretion, of the whole or such part of the real estate as may be necessary.

Sec. 1647. The court making such order shall direct the time and terms of such sale, mortgage, or lease of such estate, and the manner in which the proceeds shall be applied; and shall give due notice thereof together with a full description of the property to be thus disposed of, at which time and place it shall be the duty of the guardian to execute the order of said court, and to make a full report of his doings therein, which report shall be accompanied by the affidavit of the guardian verifying the report, and stating that such guardian did not directly or indirectly become the purchaser thereof; or if otherwise disposed of, that he is not directly or indirectly interested personally in the agreement.

Sec. 1648. When any such sale, mortgage or lease, is approved by the court ordering the same, as having been performed according to law, and not under such circumstances as to operate prejudicial to the interest of such ward, it shall be the duty of the guardian to execute a deed, mortgage or other instrument of writing, which shall be as valid and effective in law as if executed by such ward when of sound mind and discretion.

Sec. 1649. If such proceedings be disapproved by said court, the court may set them aside and proceed in like manner as if no sale had been made.

Sec. 1650. Every such guardian as often as required by the court appointing him, shall render a true and perfect account of his guardianship.

Sec. 1651. No such ward shall be held to bail, or his body be taken in execution, in any civil action; and in all actions commenced against him the process shall be served upon his guardian, and in all judgments against such ward (or his guardian as such) the execution shall be against the property of the ward only, and in no case against his body, nor against that of his guardian, nor the property of said guardian, unless he shall have rendered himself liable thereunto.

Sec. 1652. Whenever the court shall receive information that such ward has recovered his reason, he shall immediately inquire into the facts, and if he finds that such ward is of sound mind, he shall forthwith discharge such person from care and custody; and the guardian shall immediately settle his accounts and restore to such person all things remaining in his hands belonging or appertaining to such ward.

Sec. 1653. All the expenses of taking care of such insane person and the management of his estate, shall be paid out of his estate if it be sufficient, if not, out of the territorial treasury.

Sec. 1654. In all cases of appropriation out of the territorial treasury for the support and maintenance, treatment, or confinement of any insane person, the amount thereof may be recovered by the territory from any person, who by law is bound to provide for the support and maintenance of such insane person, if there be any such ability to pay the same.

Sec. 1655. The father or mother of such insane person shall maintain them at their own charge, if of sufficient ability, and if not, then the children, grand children, or grand parents, shall, if of sufficient ability, maintain them at their own charge.

Sec. 1656. In case of the death of any such ward, while under guardianship, the power of the guardian shall cease, and the estate descend and be disposed of in the same manner as if said ward had been of sound mind; the guardian shall immediately settle his accounts and deliver the estate and the effects of his ward to his legal representatives.

Sec. 1657. The several probate courts shall have the power to remove any such guardian at any time, for neglect of duty, mismanagement, or of disobedience to any lawful order, and appoint another in his place, whereupon such guardian shall immediately settle his account and render to his successor the estate and effects of his ward.

## CHAPTER CXI.

### ESTATES OF NON-RESIDENT MINORS AND PERSONS OF UNSOUND MIND.

Section
1658. Real estate may be sold on application of foreign guardian, terms, etc
1659. Court may appoint trustee to manage estate.
1660. First appointment lawfully made excludes jurisdiction of other probate courts.
1661. Trustee to give bond, duties of, etc
1662. Trustee shall deliver personal property to foreign guardian.
1663. Trustee shall have no power to apply for sale of real estate.
1664. Trustee's term of office and compensation.
1665. Moneys, to whom paid over.
1666. Trustees heretofore appointed.

Sec. 1658. Real estate belonging to minors and persons of unsound mind, residing out of this territory, may be sold upon the application of the foreign guardian of such minor or person of unsound mind to the probate court of the county in which such land is situated, upon the terms as are or may be provided by law in case of the sale of real estate belonging to minors residing in this territory.

Sec. 1659. That when any minor or person of unsound mind residing out of the limits of this territory, has any real estate, goods, chattels, rights, credits, money or effects in this territory, the probate court having jurisdiction of the county in which such property or any part thereof is situate or may be, shall, upon the application of the foreign guardian of such minor, or person of unsound mind, appoint a trustee of such minor or person of unsound mind to manage, collect, lease, and take care of said property.

Sec. 1660. The first appointment of a trustee, lawfully made, shall extend to all the property and effects of the minor in this territory, and shall exclude the jurisdiction of the probate court of any other county.

Sec. 1661. The said trustee shall give bond with surety, to the satisfaction of the probate court, and shall take upon himself the management of the estate and property of such minor or person of unsound mind situate in this territory, and the collection of debts and other demands due such minor or person of unsound mind from persons residing or being in this territory, and shall settle with the court, and be liable to suit or removal or both, for neglect or misconduct in the performance of his duties, in like manner as is or may by law be provided in the case of guardians of minors.

Sec. 1662. The said trustees shall, under the order of the probate court, deliver up to the foreign guardian of such minor or person of unsound mind all the personal property, rights and credits belonging to such minor or person of unsound mind: *Provided*, That the probate court shall make no such order except upon application of the foreign guardian, and sufficient proof of his appointment and qualification in accordance with the laws of the state or place of residence of such guardian.

Sec. 1663. The said trustee shall have no power to apply to the probate court for the sale of the real estate of such minor or person of unsound mind.

Sec. 1664. The said trustee, unless removed by the court, holds his appointment so long as the services of a trustee may be required, and shall receive such compensation for his services as may be stipulated between him and the foreign guardian; and in case no agreement has been made, then such compensation as is or may be by law provided for such guardians.

Sec. 1665. All moneys due such minor or person of unsound mind, in the hands of such trustee, shall be paid over to the foreign guardian so long as he shall remain such guardian, or in case of the decease of such minor or person of unsound mind, then to the administrator or legal representative of such minor or person of unsound mind.

(Sec. 1666. All appointments heretofore made of trustees for non-resident minors or persons of unsound mind by any probate court in this territory, under the provisions of an act passed January 21, 1859, entitled "An act relative to minors and persons of unsound mind residing without the limits of this territory;" are hereby fully legalized and made valid; and all acts lawfully done by trustees so appointed are hereby declared valid. And all such trustees and the property under their control by virtue of such appointment by such probate courts, shall be fully subject to all the provisions of this chapter.)

## CHAPTER CXII.

### TO AUTHORIZE THE ADOPTION OF CHILDREN.

Section
1667. Any one may petition probate court for leave to adopt child; proceedings on petition.
1668. If husband and wife petition, wife must be examined separate and apart.

Section
1669. Court may make order, when.
1670. Natural parents divested of all legal rights, property of parents adopting child does not descend to next of kin of child.

Sec. 1667. Any inhabitant of this territory, not married, or any husband and wife, jointly, may petition the probate court of their proper county, for leave to adopt a minor child, not theirs by birth, and for a change of name of said child; but a written consent must be given to such adoption by the child, if of the age of fourteen years, and by each of his or her living parents, who is not hopelessly insane or a confirmed drunkard. If there be no such parents, or if the parents be unknown, or shall have abandoned such child, or if such parents, or either of them, are hopelessly insane, or a confirmed drunkard, then, by the legal guardian; if there be no such guardian, then by a discreet and suitable person, appointed by said court, to act in the proceedings, as the next friend of such child: *Provided, however*, That, if the parents are living separate and apart, the consent of both is not required, but such consent may be given by the parent having the care, custody and control of such child.

Sec. 1668. That, if the petition be filed by husband and wife, the court shall examine the wife separate and apart from her husband, and shall refuse leave for such adoption, unless the court shall be satisfied, from such examination, that the wife, of her own free will and accord desires such adoption.

Sec. 1669. That, upon the compliance with the foregoing provisions, if the court shall be satisfied of the ability of the petitioner, or petitioners, to bring up and educate the child properly, having reference to the degree and condition of the child's parents, and shall be satisfied of the fitness and propriety of such adoption, the court shall make an order setting forth the facts, and declaring that, from that date, such child, to all legal intents and purposes, is the child of the petitioner or petitioners, and that the name of the child is hereby changed.

Sec. 1670. That by such order the natural parents shall be divested of all legal rights and obligations in respect to such child, and the child shall be free from all legal obligations of obedience and maintenance in respect to them, and shall be, to all intents and purposes, the child and legal heir of his or her adopter or adopters, entitled to all the rights and privileges and subject to all the obligations of a child of the adopter or adopters begotten in lawful wedlock: *Provided*, That on the decease of parents who have adopted a child or children under this act and the subsequent decease of such child or children without issue, the property of such adopting parents shall descend to their next of kin, and not to the next of kin of such adopted child or children.

[Sec. 1671. That an act entitled "An act relative to adoption," approved November 12, 1875, be and the same is hereby repealed: *Provided, however*, That no right or privilege established under said act shall be impaired in any manner by such repeal.]

## CHAPTER CXIII.

### TO DECLARE CERTAIN PERSONS HABITUAL DRUNKARDS AND TO PROTECT THEM AND OTHERS, IN PERSON AND PROPERTY.

Section
1671. Person may be adjudged habitual drunkard.
1671. Complaint to be verified.
1672. Proceedings and record of.
1673. Fees of probate judge, and liability for costs.
1674. Penalty for giving or selling liquor to habitual drunkard; of actions for.
1675. Damages for acts of habitual drunkard.
1675. Probate judge to furnish licensed retail dealers with names of habitual drunkards; list to be posted.
1676. Petition of habitual drunkard to be released from such decree.
1677. Any person addicted to the excessive use of intoxicating liquors may, upon complaint thereof, as is hereinafter provided, be adjudged an habitual drunkard.

[Sec. 1671. Any person may make complaint of any person addicted to the excessive use of intoxicating liquors, to the probate judge in the county wherein such person so addicted resides, that the person complained of is a habitual drunkard, and that in consequence thereof such person is squandering his or her earnings or property, or that he or she neglects his or her business, or that such person abuses or maltreats his or her family, which complaint must be verified by the oath of the complainant to the effect that the same is true.]

(Sec. 1673. Any person addicted to the use of intoxicating liquors may, upon complaint thereof, made as hereinafter provided, be adjudged a habitual drunkard.)

(Sec. 1674. Either the father, husband, mother, wife, son or daughter of any person addicted to the excessive use of intoxicating liquors, or any person in the interest of the relative aggrieved or of the general public, may make complaint to the probate judge of the county, wherein such person so addicted resides, that the person complained of is a habitual drunkard, and that, in consequence thereof, such person is squandering his earnings or property, or that he neglects his business or that he abuses or maltreats his family, which complaint must be verified by the oath of the complainant to the effect that the same is true.)

Sec. 1672. Upon filing of the complaint, duly verified, the probate judge shall cause a copy thereof to be served upon the accused forthwith and shall summon him to appear and answer, giving at least ten days' notice, and if upon the hearing of the evidence, the allegations of the complaint are sustained, such judge shall, in open court, declare the accused to be a habitual drunkard, and shall cause the proceeding to be entered in full upon the records of his court.

Sec. 1673. The same fees shall be allowed to the probate judge, and the sheriff or constable, in all proceedings under the foregoing section of this act, as is allowed by law for like processes and services, and like fees for witnesses as in civil cases before justice of the peace; and if the complaint is not sustained, the person making the complaint shall pay the costs; and in case the complaint is sustained, the person accused shall pay the costs.

Sec. 1674. Any person who shall sell or give any intoxicating liquors to any habitual drunkard, as defined in the foregoing section of this act, shall be deemed guilty of a misdemeanor and on conviction thereof, by any court having criminal jurisdiction, shall be fined in any sum not less than fifty dollars or more than three hundred dollars, or be imprisoned in the county jail, not less than one or more than six months, at the discretion of the court.

Sec. 1675. Any person who shall be injured in person or property or means of support, by any habitual drunkard, as defined by this act, while in a state of intoxication, or in consequence of such intoxication, shall have a right of action in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving intoxicating liquors to such habitual drunkard, have caused his intoxication in whole or in part, and such person selling or giving such intoxicating liquors as aforesaid, shall be liable severally or jointly for all damages sustained, and the same may be recovered in a civil action. A married woman may bring such action in her own name, and all damages recovered by her shall inure to her separate use, and all damages recovered by a minor under this act, shall be paid either to such minor or to such person in trust for him or her, as the court may direct.

[Sec. 1676. It shall be the duty of the probate judge of each county to furnish a copy of this act as amended, together with the names of all persons adjudged habitual drunkards, to all parties licensed to sell by retail intoxicating liquors in such county. And such retail dealer shall keep posted up in his place of business a copy of said law and a list of such habitual drunkards. A person failing to keep such law and list so posted shall forfeit his license; and if he thereafter sells intoxicating liquors he shall be punished as if selling without a license.]

[Sec. 1677. Any person so declared to be a habitual drunkard may, at any time after the expiration of two years from the time he was so declared to be such, by petition addressed to the judge of the court in which he was so adjudged, have a hearing in such court, upon a day which shall be by such court set, which day shall not be more than ten days after the filing of such petition in such court, which petition may contain a statement of facts tending to show the improved condition and habits of such petitioner and to establish his character for sobriety, and a prayer that the order on record so declaring him to be such habitual drunkard be vacated and he be released from the effects thereof; which petition shall be duly verified by the petitioner. And if upon the hearing of such petition and the evidence in support thereof it appear to the judge that such petitioner is entitled to have such record vacated and be so released, then he shall make an order so declaring that such record be vacated and annulled and that the petitioner be thereafter released from the effects thereof.]

## CHAPTER CXIV.

### OF APPEALS.

SECTION
1678. In what cases allowed.
1679. Fine for taking.
SECTION
1680. Certiorari, how and when taken.

SEC. 1678. An appeal shall be allowed from the decision of the probate court to the district court in the cases following:

1. On granting or revoking letters testamentary, or of administration, or guardianship.
2. On admitting a will to probate.
3. On revoking the probate or determining the validity of a will.
4. On setting apart property or making an allowance for a widow or child.
5. On determination of the application for the sale or conveyance of real property.
6. On the settlement of an executor, administrator or guardian.
7. On declaring, allowing, or rejecting the payment of a debt, legacy or distributive share of the estate.
8. On all other final orders and decrees.

SEC. 1679. At any time within sixty days after the same is made, and not later, any person interested in the estate of any deceased person may appeal to the district court from any order or decision of any probate judge or court made that affects said estate; said appeal shall be taken in the same manner, and like notice shall be given as in cases of appeal from justices' courts to the several district courts of this territory.

SEC. 1680. Writs of certiorari may, at any time within sixty days after the rendition of the order or decision in the probate court, issue out of the district court to examine and determine upon any alleged errors occurring in the final decision or order of the probate court, which shall be heard and determined in the same manner as are like writs to justices of the peace: *Provided*, The party will, under the order of the court, file a proper bond, and will correct such irregularities as may exist: *And provided further*, The court shall be satisfied that the party making the application to correct, is not in fault, and that no injustice is done to the opposite party: *Provided*, That none of the provisions of this section shall be construed as prohibiting appeal to the district court.

## CHAPTER CXV.

### OF CONSTRUCTION.

SECTION
1681. With regard to existing statutes.
1682 With regard to proceedings commenced.
1683. With regard to limitations for acquiring rights or barring remedies.
1684. No law continued because it is consistent with this act.
SECTION
1685. This repeal does not revive any former law, affect any right already existing or accrued or proceeding taken.
1686. Provisions to be construed liberally.

SEC. 1681. The provisions of this code so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

SEC. 1682. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as applicable.

SEC. 1683. When a limitation, or a period of time prescribed in any existing statute for acquiring a right or barring a remedy has begun to run before this code takes effect, and the same or any other limitation is prescribed in this code, the time which is run shall be deemed part of the time prescribed as such limitation.

SEC. 1684. No statute, law, or rule is continued in force because it is consistent with the provisions of this code on the same subject; but in all cases provided for by this code, all statutes, laws, and rules heretofore in force in this territory, whether consistent or not with the provisions of this act, unless expressly continued in force by it, are repealed and abrogated.

SEC. 1685. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this code provided, nor does it affect any private statute not expressly repealed.

SEC. 1686. The provisions of this act shall be liberally construed and shall not be limited by any rule of strict construction.

# JUSTICE PRACTICE ACT.

## CHAPTER CXVI.

### RELATING TO JUSTICES OF THE PEACE AND TO THEIR PRACTICE AND JURISDICTION.

SECTION
1689. Justices, when and where elected.
1690. Each precinct entitled to one.
1691. Who eligible as justice.
1692. Election of justice; how conducted.
1693. Justice to give bond; form of.
1694. Bond to be filed; action upon.
1695. Penalty for neglect to deliver books, etc.
1696. Vacancies; how filled.
1697. Election to fill vacancies, auditor to post notices; how.
SECTION
1698. At such elections ten electors may elect judges of election.
1699. Opening and closing of polls.
1700. Qualification of justice.
1701. Special election.
1702. Jurisdiction throughout county, but to reside in precinct.
1703. Provision in case of division of precinct.
1704. In case of death, resignation, etc., books, papers, etc.

SEC. 1689. The qualified voters of each election precinct, in the several organized counties of this territory, shall at the time and place of holding the general election, elect one or more justices of the peace.

SEC. 1690. Each precinct shall be entitled to one justice of the peace, but the board of county commissioners, at the time of organizing such precinct, or at any time afterwards, may, if they deem proper, authorize an additional justice of the peace to be elected therein.

SEC. 1691. No person shall be eligible to the office of justice of the peace who is not a qualified voter, and who has not been a resident of the county in which he is elected six months next preceding his election; nor shall any sheriff, coroner, or clerk of the district court be eligible to, or hold such office.

SEC. 1692. The election of justice of the peace shall be conducted, and return of such election made in the same manner, as other elections; and every person duly elected, shall be entitled to a certificate of election, and shall take an oath of office; which oath shall be endorsed on the back of the certificate of election, and, together with the certificate, filed in the office of the county auditor.

SEC. 1693. Every person elected a justice of the peace, shall, at the time of filing his oath of office in the office of the county auditor, enter into a bond with the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the said auditor, in the sum of five hundred dollars, conditioned that he will faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice af the peace. Said bond may be in the following form:

Know all men by these presents, that we, J P, A B and C D are held and firmly bound unto the board of county commissioners of the county of —, in the territory of Washington, in the sum of five hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals; dated this — day of —, A. D. 18—.

Whereas, the said J P has been duly elected a justice of the peace, in and for the precinct of —, in the county of —, —, A. D. 18—. Now the condition of the above obligation is such, that if the said J P shall faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace, then this obligation shall be void, otherwise in full force.

J P, [L. S.]
A B, [L. S.]
C D. [L. S.]

SEC. 1694. Such bond shall be filed in the office of the county auditor; and every person aggrieved by a breach of the condition thereof, may, by an action upon the bond, have judgment against the justice and his sureties, for such sum as he may show himself entitled to, with costs and interest at the rate of twenty-five per cent. per annum; and upon any such judgment stay of execution shall not be allowed.

SEC. 1695. Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified; and every justice heretofore elected and qualified, shall continue to act as such until his term of office expires, and until his successor is elected and qualified.

SEC. 1696. Whenever a vacancy shall exist in the office of justice of the peace, in any precinct of any county in this territory, the same shall be filled by election.

SEC. 1697. When any auditor of any county shall have filed with him by any legal voter of a precinct in which a vacancy exists, a written certificate of any vacancy, if he be satisfied that there is a vacancy, he shall post or cause to be posted three notices to the legal voters in said precinct calling an election to fill such vacancy in the office of justice of the peace in said precinct, which notices shall also set forth the time when and places where the polls shall be held, and be posted in three public places in the precinct: *Provided*, That no such notices shall be posted if said written certificate is filed with the auditor within ninety days next preceding any general election.

Sec. 1698. Whenever ten legal voters shall have assembled at the place named for holding such election for justice of the peace, they may elect three of their number as judges for said special election, two of whom shall act as clerks; and they are hereby required to take an oath and make a return to the county auditor, as officers of election are now, by law, required to do.

Sec. 1699. Whenever a special election is held under the provisions of this act, the polls shall be opened at eleven o'clock A. M., or so soon thereafter, not more than two hours, as ten persons are present, and in a precinct where no more than fifty votes were polled at the then preceding general election, shall be kept open two hours; when over fifty votes were cast at the last preceding general election four hours.

Sec. 1700. Every person elected a justice of the peace under the provisions of this act, shall qualify in the same manner as if elected at a general election, and shall hold his office until the next general election and until his successor is elected and qualified.

Sec. 1701. The judges of the special election herein provided for shall appoint one of their number messenger to convey the returns of said election and file the same with the county auditor, for which he shall receive two dollars mileage each way at the rate of ten cents per mile; and no further fees shall be paid the said judges of election.

Sec. 1702. The jurisdiction of justices of the peace elected in pursuance of the provisions of this act, shall be co-extensive with the limits of the county in which they are elected or appointed; and no other or greater, whether said county be attached to any other county for judicial purposes or not; but every justice of the peace shall continue to reside in the precinct for which he was elected, or appointed, during his continuance in office.

Sec. 1703. When a precinct shall be divided, and any justice of the peace of the original precinct shall fall into the new one, he shall continue to discharge the duties of justice of the peace until his term of office expires, and his successor is elected and qualified.

Sec. 1704. If any justice of the peace shall die, resign, or remove out of the precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records and papers appertaining to his office, or relating to any suit, matter or controversy, committed to him in his official capacity, shall be delivered to the nearest justice in the precinct, who may thereupon proceed to hear, try and determine such matter, suit or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such suit or matter was commenced to have done: *Provided*, That if there be no other justice of the peace in said precinct, such docket, books, records and papers shall be delivered to the county auditor, who, on demand, shall deliver the same to a justice of said precinct, when there shall be one qualified therein, who shall exercise the same powers as though they had been originally delivered to him.

Sec. 1705. Every person whose duty it is to deliver over the dockets, books, records and papers as prescribed in the last section, shall forfeit and pay, for the use of the county, fifteen dollars for every three months' neglect to perform such duty, which sum may be recovered at the suit of any person.

## CHAPTER CXVII.

### JURISDICTION OF JUSTICES OF THE PEACE.

Section
1706. Co extensive with county for which elected.
1707. Office to be in precinct for which elected and he may issue process throughout county.
1708. Not to hold office with an attorney, etc.
Section
1709. Jurisdiction conferred, and practice in justices' court.
1710. Actions cognizable, enumerated.
1711. Actions not in jurisdiction of justice.

Sec. 1706. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater unless otherwise expressly provided by statute.

Sec. 1707. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere; but he may issue process in any place in his county.

Sec. 1708. No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice of the peace.

Sec. 1709. Every justice of the peace elected in any precinct in this territory, is hereby authorized to hold a court for the trial of all actions the next section enumerated, to hear, try and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this territory; and all laws of a general nature shall apply to such justice's court, as far as the same may be applicable, and not inconsistent with the provisions of this chapter.

Sec. 1710. Every justice of the peace shall have jurisdiction over, and cognizance of the following actions and proceedings:

1. Of an action arising on contract for the recovery of money only, if the sum claimed do not exceed one hundred dollars.

2. Of an action for damages for injury to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property when no issue is raised by the answer, involving the plaintiff's title to, or possession of the same, if the damages claimed do not amount to one hundred dollars; also of actions to recover the possession of personal property, when the value of such property does not amount to one hundred dollars.

3. Of an action for a penalty, not exceeding one hundred dollars.

4. Of an action upon a bond conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the pay-

ments are to be made by installments, an action may be brought for each installment, as it shall become due.

5. Of an action on an undertaking or surety bond, taken by him, if the amount claimed do not exceed one hundred dollars.

6. Of an action for the foreclosure of any mortgage, or the enforcement of any lien on personal property, when the debt secured does not exceed one hundred dollars.

7. Of an action for damages, for fraud in the sale, purchase, or exchange of personal property, if the damages claimed do not exceed one hundred dollars.

8. Of an action for a forcible or unlawful detention of lands, tenements, or other possessions.

9. Of an action to try the right of occupancy or possession to a mining claim.

10. To take and enter judgment on the confession of a defendant, when the amount does not exceed one hundred dollars.

11. And shall, in all cases, have power to issue writs of attachments upon goods, chattels, moneys and effects, where the amount does not exceed one hundred dollars.

Sec. 1711. The jurisdiction conferred by the last section, shall not however extend to the following civil actions:

1. In which the title to real property shall come in question.

2. Nor to an action for the foreclosure of a mortgage, or enforcement of a lien on real estate.

3. Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction.

4. Nor to any action against an executor or administrator as such.

## CHAPTER CXVIII.

### COMMENCEMENT OF ACTIONS—SERVICE AND RETURN OF PROCESS.

Section
1712. Actions; how instituted.
1713. Commencement of action by summons.
1714. Commencement by complaint and notice.
1715. Complaint and notice; when served.
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1726. Property; when may be attached.
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Section
1743. Sunday, writ of attachment may be issued.
1744. Attachment binds property; when.
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1753. Action by infant, how commenced.
1754. Infant defendant.
1755. Time for appearance.
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1758. Pleadings; when shall be in writing.
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1762. Pleadings to be verified; how.
1763. Complaint; when taken to be true.
1764. Objections to pleading; for what taken.
1765. Variance; what.
1766. Amendments.
1767. Set-off.
1768. Costs; defendant to have judgment for; when.
1769. Continuance not to exceed sixty days.

Sec. 1712. Civil actions in the several justices' courts of this territory may be instituted either by the voluntary appearance and agreement of the parties, by the service of a summons, or by the service upon the defendant of a true copy of the complaint and notice, which notice shall be attached to the copy of the complaint and cite the defendant to be and appear before the justice at the time and place therein specified, which shall not be less than six nor more than twenty days from the date of filing the complaint.

SEC. 1713. A party desiring to commence an action before a justice of the peace, for the recovery of a debt by summons, shall file his claim with the justice of the peace, verified by his own oath, or that of his agent or attorney, and thereupon the justice of the peace shall, on payment of his fees, if demanded, issue a summons to the opposite party, which summons shall be in the following form, or as nearly as the case will admit, viz:

TERRITORY OF WASHINGTON, }
——— County. } ss.

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to summon—— if he (or they) be found in your county to be and appear before me at — on — day of — at — o'clock P. M. or A. M., to answer the complaint of — for a failure to pay him a certain demand, amounting to — dollars and — cents, upon — (here state briefly the nature of the claim) and of this writ make due service and return.

Given under my hand this — day of — 18—.

——————, Justice of the Peace.

And the summons shall specify a certain place, day and hour for the appearance and answer of the defendant, not less than six nor more than twenty days from the date of filing plaintiff's claim with the justice, which summons shall be served at least five days before the time of trial mentioned therein, and shall be served by the officer delivering to the defendant, or leaving at his place of abode with some person over twelve years of age, a true copy of such summons, certified by the officer to be such.

SEC. 1714. Any person desiring to commence an action before a justice of the peace, by the service of a complaint and notice, can do so by filing his complaint verified by his own oath or that of his agent or attorney with the justice, and when such complaint is so filed, upon payment of his fees if demanded, the justice shall attach thereto a notice, which shall be substantially as follows:

TERRITORY OF WASHINGTON, }
———County. } ss.

To————

You are hereby notified to be and appear at my office in — on the — day of—, 18—, at the hour of — M., to answer to the foregoing complaint or judgment will be taken against you as confessed and the prayer of the plaintiff granted.

Dated —, 18—. ————, J. P.

SEC. 1715. The complaint and notice shall be served at least five days before the time mentioned in the notice for the defendant to appear and answer the complaint, by delivering to the defendant, or leaving at his place of abode, with some person over twelve years of age, a true copy of the complaint and notice, certified by the officer or person making the service to be such.

SEC. 1716. All process issued by justices of the peace, shall run in the name of the United States, be dated the day issued, signed by the justice granting the same, and directed to the sheriff or any constable of the proper county, and the same, as also the complaint and notice, shall be served by one of said officers, unless otherwise directed by the justice.

SEC. 1717. Every constable or sheriff serving any process, or complaint and notice, shall return thereon in writing, the time and manner of service, and shall sign his name to such return and endorse thereon his fees for service.

SEC. 1718. Any justice may, by appointment in writing, authorize any person, other than the parties to the proceeding or action, to serve any process or paper issued by such justice, and any such person making such service shall return on such process or paper, in writing, the time and manner of service, and shall sign his name to such return, and be entitled to like fees for making such service, as a sheriff or constable, and shall endorse his fees for service thereon: *Provided*, It shall not be lawful for any justice to issue any process or papers to any person but a regularly qualified sheriff or constable, in any precinct where such officers reside, unless from sickness or some other cause said sheriff or constable is not able to serve the same.

SEC. 1719. Proof of service in either of the above cases shall be as follows: When made by a constable or sheriff his return signed by him and indorsed on the paper or process. When made by any person other than such officer, then by the affidavit of the person making the service.

SEC. 1720. In case personal service cannot be had by reason of the absence of the defendant from the county in which the action is sought to be commenced, it shall be proper to publish the summons or notice with a brief statement of the object and prayer of the claim or complaint, in some weekly newspaper published in the county wherein the action is commenced; or if there is no paper published in such county, then in some newspaper published in the nearest adjoining county, which notice shall be published not less than once a week for three weeks prior to the time fixed for the hearing of the cause, which shall not be less than four weeks from the first publication of said notice. Said notice may be substantially as follows:

TERRITORY OF WASHINGTON, }
County of———. } ss.
In justice's court, ———— justice.
To—————.

You are hereby notified that — has filed a complaint (or claim as the case may be) against you in said court which will come on to be heard at my office in —, in — county, W. T., on the — day of —, A. D. 18—, at the hour of — o'clock — M., and unless you appear and then and there answer, the same will be taken as confessed and the demand of the plaintiff granted. The object and demand of said claim (or complaint, as the case may be) is (here insert a brief statement.)

Complaint filed —, A. D. 18—. ————, J. P.

SEC. 1721. Proof of service, in case of publication, shall be the affidavit of the publisher, printer, foreman or principal clerk, showing the same.

SEC. 1722. The written admission of the defendant, his agent or attorney, endorsed upon any summons, complaint and notice, or other paper, shall be complete proof of service in any case.

SEC. 1723. The court shall be deemed to have obtained possession of the case from the time the complaint or claim is filed, after completion of service, whether by publication or otherwise, and shall have control of all subsequent proceedings.

SEC. 1724. Every justice of the peace shall keep a docket in a well bound book, in which he shall enter:

1. The titles of all actions commenced before him.

2. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand.

3. The date of the notice and the time of its return; and if an order to arrest the defendant be made, the statement of the facts on which the order is issued.

4. The time when the parties, or either of them, appear, or their non-appearance, if default be made.

5. A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any set-off be pleaded, a similar statement of the set off, and the amount estimated, and every motion, rule, order, and exception with the decision of the court thereon.

6. Every continuance, stating at whose request, and for what time.

7. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial and return of the jury.

8. The names of the jury who appear and are sworn; the names of witnesses sworn, and at whose request.

9. The verdict of the jury, and when received; and if the jury disagree and are discharged, the fact of such disagreement and discharge.

10. The judgment of the court, and the time when rendered.

11. The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt and costs, and the fees due to each person separately.

12. The fact of an appeal having been made and allowed, and the time when.

13. Satisfaction of the judgment, or any money paid thereon, and the time when.

14. And such other entries as may he material.

SEC. 1725. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs before the commencement of the action.

SEC. 1726. In an action for the recovery of money, the plaintiff, at the time of filing his claim or complaint with the justice, or at any time afterwards, may have the property of the defendant attached in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

SEC. 1727. A writ of attachment shall be issued by any justice with whom a complaint or claim has been filed, whenever the plaintiff, his attorney or agent, shall make and file with such justice an affidavit stating that a cause of action exists against the defendant in favor of the plaintiff, together with the nature thereof, and that the defendant is indebted to the plaintiff thereon, specifying the amount of such indebtedness, as near as may be over and above all just set-offs and counter claims, and that the same is not secured by any mortgage or lien upon real or personal property, or pledge of personal property, or if originally so secured, such security has, without any act of plaintiff's, become inadequate.

Sec. 1728. The plaintiff, or some one in his behalf, shall, before the writ issues, execute a bond in a sum equal to the amount claimed, with sufficient surety, to be approved by the justice. payable to the defendant, to the effect that the plaintiff will duly prosecute his proceeding in attachment, and will pay all damages which may be sustained by the defendant, if the proceedings of the plaintiff shall be wrongful and oppressive.

Sec. 1729. The writ shall be directed to the sheriff or constable, and shall be delivered to such officer or such other person as may be specially authorized to execute the same. It shall require such officer to seize and take into his possession the property of the defendant in his county not exempt from execution, or sufficient thereof to satisfy the amount of the plaintiff's claim and costs.

Sec. 1730. Upon receipt of the writ, the sheriff, constable or other person authorized to serve the same, shall proceed to attach the property, goods and chattels of the defendant, subject to execution, in the manner hereinafter provided.

Sec. 1731. Personal property, capable of manual delivery, shall be attached by taking it into custody; stock or shares, or interest in stock or shares of any corporation or company, shall be attached by leaving with the president or other head of the same, or the secretary, cashier or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ; debts and credits and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control such credits, or other personal property, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits, and other personal property in his possession, or under his control belonging to the defendant, are attached in pursuance of such writ.

Sec. 1732. Upon receiving information from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant. the sheriff or other person or officer having the writ shall serve upon such person a copy of the writ and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of such writ.

Sec. 1733. All persons having in their possession or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant, at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, constable, or other officer or person having the writ, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged or any judgment recovered by him be satisfied.

SEC. 1734. Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property, belonging to the defendant, may be required to attend before the justice of the peace by whom the writ was issued, and be examined on oath respecting the same. The defendant may also be required to attend, for the purpose of giving information respecting his property, and may be examined on oath. The justice may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff, constable or other officer or person having the writ, on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all personal property containing the amount and description thereof.

SEC. 1735. The sheriff, constable, or other officer, having the writ, shall make a full inventory of the property attached and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request, at the time of service, the party owing the debt or having the credit, to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of the refusal with the writ. The party, refusing to give the memorandum, may be required to pay the cost of any proceedings, taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

SEC. 1736. If any of the property attached be perishable, the officer or person having the writ shall sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be recovered previous to the attachment. Debts and credits attached may be collected by the officer or person having the writ, if the same can be done without suit. The officer's receipts shall be a sufficient discharge for the amount paid.

SEC. 1737. If any property attached be claimed by any other person than the defendant or his agent, and the claimant make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer or person having the writ, while the property is in his possession; such officer or person shall not be bound to keep the property unless the plaintiff, on demand, indemnify him against such claim by a bond executed by at least two sufficient sureties, who must be residents of the county, and able to prove that they are each worth double the value of the property attached, over and above all debts and liabilities, exclusive of property exempt from execution, and no claim to property attached shall be valid against the officer, unless made as aforesaid, and notwithstanding such claim when so made, he may retain the property a reasonable time to demand such indemnity.

SEC. 1738. When a claim is made to property in the manner provided in the last section, the officer shall at once make a return of the writ with his doings endorsed thereon, and deliver the claimant's affidavit to the justice, who shall file the same and cause notice thereof to be given to the plaintiff or his attorney, and if the property be not released for failure on the part of the plaintiff to indemnify the officer, he shall set the case for hearing, upon the allegations of the affidavit; and the case shall be tried as a new action between the claimant as plaintiff, and the officer and the plaintiff in the attachment suit, as defendants, and the case shall proceed as in other civil actions, and, if either party demand it, a jury may be empanneled as in other cases.

SEC. 1739. If in such suit, the claimant establish his title or right to the possession of the property, judgment shall be rendered in his favor for possession of the property and for costs against the plaintiff in the attachment; if he fail to establish his title or right to the property, judgment shall be rendered against him for costs.

SEC. 1740. After judgment in the attachment suit, the property attached shall be disposed of in the same manner as provided by law for similar cases in the district courts.

SEC. 1741. Property attached may be released by the defendant giving a bond in such amount as the justice may designate, with good and sufficient sureties, conditioned for the payment of any judgment that may be recovered against him in the action and the costs thereof; or by claiming that the property is exempt, in which case the question of exemption shall be tried by the justice summarily: *Provided, however*, That if either party demand it, a jury may be empanneled and the matter may be tried before the court and jury as other civil actions, and so much of the property, as shall be decided to be exempt, shall be released and delivered to the defendant.

SEC. 1742. The plaintiff shall not have judgment for costs of such attachment except in some of the following cases, viz:

1. When the defendant shall have been personally served with process; or.
2. When the property of the defendant shall have been attached; or,
3. When a garnishee shall have been summoned in the county, who shall be found to be indebted to the defendant, or to have property or assets in his hands subject to the attachment.

SEC. 1743. A writ of attachment may be issued and executed on Sunday, if the plaintiff will show in his affidavit that the defendant is about to abscond on that day, to the injury of the plaintiff.

SEC. 1744. A writ of attachment binds the defendant's property from the time it is served.

SEC. 1745. If after a writ of attachment is placed in the hands of the officer or other person authorized to serve the same, any property of the defendant's is removed from the county, the officer or other person so having such writ may pursue and seize the same in any county in the territory within five days after the removal thereof.

SEC. 1746. A justice of the peace shall issue a warrant of arrest in all such cases within his jurisdiction, and for such causes, and upon such proof as is provided for an order for a warrant in the act regulating civil actions.

SEC. 1747. Before issuing the warrant of arrest the justice shall require a bond on part of the plaintiff, with one or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which may be sustained by reason of the arrest, not exceeding the sum specified in the bond, which shall be at least one hundred dollars.

Sec. 1748. The warrant shall be served by arresting the defendant and taking him before the justice of the peace who issued the same; but if such justice, at the return thereof, be absent or unable to try the action, the officer shall immediately take the defendant to the nearest justice of the same county, who shall take cognizance of the action, and proceed thereon as if the warrant had been issued by himself.

Sec. 1749. The officer making the arrest shall immediately give notice to the plaintiff, his agent or attorney, and indorse on the warrant the time of the arrest, and the time of serving notice on the plaintiff.

Sec. 1750. When a defendant is brought before a justice on a warrant he shall be detained in the custody of the officer until he shall be discharged according to law; but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the action shall be commenced, or unless it has been delayed at the instance of the defendant.

Sec. 1751. If the defendant, on his appearance, demand a continuance, the same may be granted on condition that he remain in custody or execute and file with the justice a bond, with one or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court; or that the sureties will pay to plaintiff the amount of any judgment which he may recover in the action. On filing such bond, the justice shall order the defendant to be discharged from custody.

Sec. 1752. If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer, for every such offense, shall pay to the party injured ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action.

Sec. 1753. No action shall be commenced by an infant plaintiff except by his guardian, or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such action, who shall be responsible for the costs therein.

Sec. 1754. After service and return of process against an infant defendant, the action shall not be further prosecuted, until a guardian for such infant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action.

Sec. 1755. The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the notice for appearance, but shall not be required to remain longer than that time, unless both parties appear; and the justice being present, is actually engaged in the trial of another action or proceeding; in such case he may postpone the time of appearance until the close of such trial.

### PLEADINGS AND ADJOURNMENTS.

SEC. 1756. The pleadings in justice's court shall take place upon the appearance of the parties, unless they shall have been previously filed or unless the justice shall, for good cause shown, allow a longer time than the time of appearance.

SEC. 1757. The pleadings in the justice's court shall be:

1. The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action.

2. The answer of the defendant, which may contain a denial of the complaint, or any part thereof; and also a statement, in a plain and direct manner, of any facts constituting a defense.

3. When the answer sets up a set-off, by way of defense, the reply of the plaintiff.

SEC. 1758. The pleadings shall be in writing, when the action is for one of the following causes:

1. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements or other possessions.

2. To recover the occupancy or possession of a mining claim. In all other cases the pleadings may be oral or in writing.

SEC. 1759. When the pleadings are oral, the substance of them shall be entered by the justice in his docket. When in writing they shall be filed in his office and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

SEC. 1760. A statement in an answer or reply, that the party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleadings of the adverse party to form a belief, shall be deemed equivalent to a denial.

SEC. 1761. When the cause of action, or set-off, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set-off. The court may, at the time of pleading, require that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being given in evidence.

SEC. 1762. Every complaint, answer or reply shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified.

SEC. 1763. Every material allegation in a complaint, or relating to a set-off in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case.

SEC. 1764. Either party may object to a pleading by his adversary, or to any part thereof that is not sufficiently explicit for him to understand it, or that it contains no cause of action or defense although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded.

SEC. 1765. A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

SEC. 1766. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omissions in the allegations or denials, necessary to support the action or defense, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a continuance is necessary to the adverse party in consequence of such amendment, a continuance shall be granted. The court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party.

SEC. 1767. To entitle a defendant to any set off he may have against the plaintiff, he must allege the same in his answer; and the statutes regulating set offs in the district court, shall in all respects be applicable to a set off in a justice's court, if the amount claimed to be set off, after deducting the amount [found] due the plaintiff, be within the jurisdiction of the justice of the peace; judgment may, in like manner, be rendered by the justice in favor of the defendant, for the balance found due the plaintiff.

SEC. 1768. When the set off of the defendant proved shall exceed the claim of the plaintiff, and such excess in amount exceed the jurisdiction of a justice of the peace, the court shall allow such amount as is necessary to cancel the plaintiff's claim, and give the defendant a judgment for costs; but in such case, the court shall not render judgment for any further sum in favor of the defendant.

SEC. 1769. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if the defendant be not under arrest, and sufficient cause be shown on oath, continue the case for any time not exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in all other respects shall be governed by the law applicable to continuance in the district court.

## CHAPTER CXIX.

### TRIAL BY JURY.

SECTION
1770. Either party may demand jury, proviso.
1771. Number of jurors.
1772. Justice shall issue venire.
1773. Sheriff or constable to execute venire.
1774. Either party may challenge jurors.
1775. Challenges for cause.

SECTION
1776. Justice to administer oath to jury.
1777. Verdict to be delivered to justice, and entered on docket.
1778. Jury unable to agree, may be discharged, and new venire issue.
1779. Penalty of juror failing to attend.

SEC. 1770. Before the justice shall commence an investigation of the merits of the cause either party may demand that the cause be tried by a jury: *Provided*, That the party demanding the jury shall first pay to the justice the sum of six dollars which shall be paid over by the justice to the jury before they are discharged, and said amount shall be taxed as costs against the losing party.

Sec. 1771. The jury shall consist of six persons, unless the parties agree upon any number of jurors less than six, to try the cause; in which case the jury shall consist of such number, not exceeding six, as the parties may agree upon.

Sec. 1772. The justice shall issue a venire, directed to the sheriff, or any constable of the county where the cause is to be tried, commanding him to summon six (or such number as the parties may have agreed upon) good and lawful men of the county, qualified to serve as jurors in in the district court of the same county, who shall be in no wise of kin to either party, nor interested in the action, to appear before said justice, at a time and place to be named therein, to make a jury for the trial of the cause between the parties therein named.

Sec. 1773. The sheriff or constable shall execute such venire fairly and impartially, and shall not summon any person whom he has reason to believe is biased or prejudiced, for or against either of the parties. He shall summon the jurors personally, and make a list of the persons summoned, which he shall certify and annex to the venire and return the same to the justice. If a sufficient number of competent jurors cannot be obtained from the panel returned, the sheriff or constable shall immediately summon others to serve in their place, and all jurors summoned under the provisions of this act, shall receive the same compensation from the time they are summoned until discharged, as is allowed to witnesses under the provisions of this act.

Sec. 1774. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenges shall be to individual jurors, and shall be peremptory, or for cause. Each party shall be entitled to three peremptory challenges.

Sec. 1775. Challenges for cause may be taken on any ground that would be a good cause of challenge on the trial of an action in the district court. Challenges for cause shall be tried by the justice.

Sec. 1776. When the jury is selected, the justice shall administer to them an oath or affirmation, well and truly to try the cause.

Sec. 1777. When the jury have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his docket.

Sec. 1778. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time, cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce.

Sec. 1779. Every person who shall be duly summoned as a juror, and shall not appear nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.

## CHAPTER CXX.

### OF JUDGMENT.

Section
1780. When action may be dismissed without prejudice.
1781. Upon failure of defendant to appear.
1782. If jury not demanded, justice to hear cause.
Section
1783. Judgment, when to be rendered.
1784. Defendant may offer in writing to allow judgment for specified sum.
1785. Costs to go to prevailing party.

Sec. 1780. Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2. When he fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter.

3. When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial it shall be deemed waived, and shall not be cause of reversal.

Sec. 1781. When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:

1. When the defendant has been served with a true copy of the complaint, judgment shall be given without further evidence for the sum specified therein.

2. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceed the amount specified in the complaint.

Sec. 1782. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly.

Sec. 1783. Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases it shall be entered within three days after the close of the trial.

Sec. 1784. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with costs then accrued; but if he do not accept such offer before the trial, and fail to recover on the trial of the action, a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it, shall not be given in evidence to affect the recovery, otherwise than as to costs, as above provided.

Sec. 1785. When the prevailing party is entitled to costs, by this act, the justice shall add their amount to the judgment; or in case of the failure of the plaintiff to recover, or in case of dismissal of the action, he shall enter up judgment in favor of the defendant for the amount of such costs.

## CHAPTER CXXI.

### OF EXECUTIONS AND PROCEEDINGS THEREON.

Section
1786. Execution, how long it may be stayed.
1787. Requisites of stay bond.
1788. Form of bond.
1789. At the expiration of stay, how execution satisfied.
1790. Bail may have judgment against defendant.
1791. If judgment stayed, execution revoked.
1792. Of setting off mutual judgments.
1793. Where judgment proposed to be set off, rendered before another justice.
1794. Action of justice after allowance, etc.
1795. Execution issued on application of party, entitled to same.
Section
1796. Of judgment not satisfied during continuance in office of justice rendering
1797. Execution unsatisfied in one county, transcript to be sent to justice of another county, who shall issue execution.
1798. Execution, to whom directed, when dated and when returnable, to be against goods and chattels.
1799. Before delivery of execution certain entries to be made in docket and on execution.
1800. Execution not satisfied, may be renewed.
1801. Of sale on execution, notice, etc.
1802. Goods and chattels to be sold at public sale

SECTION
to highest bidder, and return of execution.
1803 Officer not to be a purchaser at such sale.
1804. When execution may issue against the person of defendant.
1805. When garnishee may be summoned.

SECTION
1806. Justice may issue execution against prevailing party for fees and costs; when.
1807. Method of proceeding, upon adverse claim to property levied on.
1808 Construction of the last section.

SEC. 1786. The execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party, and for the following periods of time, to be calculated from the date of the judgment:

1. If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month.

2. If it be for more than twenty-five dollars, two months.

SEC. 1787. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after rendering of the judgment, enter into a bond, before the justice, to the adverse party, in a sufficient sum to secure the payment of the judgment and costs, conditioned to be void upon such payment, at the expiration of the stay.

SEC. 1788. Such bond shall be signed by the person entering into the same, and may be in the following form:

Whereas, A B, has obtained a judgment before J P, one of the justices of the peace in and for —— county, on the — day of ——, 18—, against C D, for —— dollars; now, therefore, I, E F, acknowledge myself bound to A B in the sum of —— dollars; this bond to be void if such judgment shall be paid at the expiration of — month after the time it was rendered.

Dated the — day of —, 18—. ————, E F.

SEC. 1789. If at the expiration of such stay, the judgment be not paid, the execution shall issue against both the principal and bail. If the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money, collected by him on the execution, was collected from the bail, and the time when the same was received.

SEC. 1790. After the return of such execution, the bail shall be entitled, on application to the justice, to have the judgment, or so much thereof as may have been collected from him in satisfaction of the execution, transferred to his use; and he may collect the same from the defendant by execution, together with the interest at the rate of twelve per cent. per annum.

SEC. 1791. If judgment be stayed in the manner above provided, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with like effect as he is hereinafter directed to revoke an execution, after an appeal has been allowed; and if the defendant have been committed, shall order him to be discharged from custody.

SEC. 1792. If there be mutual justice's judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party, and reasonable notice given to the adverse party, one may be set off against the other, by the justice before whom the judgment against which the set-off is proposed, may be.

SEC. 1793. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off shall produce before such justice a transcript of such judgment, upon which there is a certificate of the justice before whom such may be, that it is unsatisfied in whole or in part, and that there is no appeal, and that such transcript was obtained for the purpose of being set-off against the judgment to which it is offered as a set-off. The justice granting such transcript shall make an entry thereof on his docket, and all further proceedings on such judgment shall be stayed, unless such transcript be returned with the proper justice's certificate thereon, that it has not been allowed in set-off.

SEC. 1794. If any justice shall set off one judgment against another, he shall make an entry thereof on his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

SEC. 1795. Execution for the enforcement of a judgment in a justice's court, may be issued on the application of the party entitled thereto, in the manner hereinbefore prescribed; but after the lapse of five years from the date of the judgment, no execution shall issue except by leave of the justice before whom such judgment may be, upon reasonable notice, to the defendant.

SEC. 1796. When any judgment shall have been rendered by any justice of the peace, and the same not be satisfied during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice to whom the docket shall be delivered shall issue execution upon such unsatisfied judgment in the same manner, and with like effect as if he himself had rendered the judgment.

SEC. 1797. If the defendant have not goods and chattels in the county in which judgment was rendered, sufficient to satisfy the execution, the justice before whom such judgment may be, shall, at the request of the party entitled, make out a certified transcript of the same, which may be delivered to a justice in any other county, who shall make an entry thereof in his docket, and issue execution thereon for the amount of the judgment, or such part as shall be unsatisfied, with costs as in other cases.

SEC. 1798. The execution shall be directed (except when it is otherwise especially provided,) to the sheriff or any constable of the county where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and it shall be against the goods and chattels of the person against whom the same is issued.

SEC. 1799. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and costs, and of the fees due to each person separately, and the officer receiving such execution shall indorse the time of the reception of the same.

SEC. 1800. If an execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time by the justice who issues the same, or by the justice to whom his docket is transferred, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied the indorsement of renewal shall express the sum due on the execution. Every such indorsement shall renew the execution in full force in all respects for thirty days, and no longer; and an entry of such renewal shall be made in the docket of the justice.

SEC. 1801. The officer, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice by at least three advertisements, put up at three public places in the county, of the time and place, when and where they will be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

SEC. 1802. At the time and place so appointed, if the goods and chattels be present for inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder; he shall return the execution and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

SEC. 1803. No officer shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution, and every such purchase shall be absolutely void.

SEC. 1804. If the action be one in which the defendant might have been arrested upon a warrant, an execution against the person of such defendant may be issued after the return of an execution against his property unsatisfied in whole or in part. An execution against the person may likewise be issued after such return, where the defendant has been arrested upon a warrant and not discharged according to law.

SEC. 1805. If there be no property found, or if the goods and chattels levied on be not sufficient to satisfy such execution, the officer shall, on demand of the plaintiff, summon in writing as garnishees, such persons as may be named to the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees, and the like proceedings shall be had thereon before the justice to final judgment as in the proceedings by attachment.

SEC. 1806. Any justice of the peace may issue an execution against the prevailing party, to collect fees and costs for which such party may be liable, after an execution has been first issued against the other party, and returned "no property found."

SEC. 1807. If any property levied on be claimed by any other person than the defendant in the execution, and the claimant make affidavit of his title or right to the possession of the same, stating the ground of such title or right, and serve the same upon the sheriff or constable, while the property is in his posession, said sheriff or constable shall not be bound to keep the property unless the plaintiff on demand indemnify him in the same manner as provided in this act for cases where property held under attachment is claimed by persons not parties to the suit and when such claim is made, the sheriff or constable shall immediately file the claimant's affidavit with the justice, and notify the plaintiff thereof, and unless the property be at once released, the justice shall set the case for trial upon the allegations of the claimant's affidavit, and the case shall proceed and be determined in the same manner as provided in this act for cases where property held under attachment is claimed by persons not parties to the suit.

Sec. 1808. Nothing contained in the last section shall be so construed as to prevent the claimant of property levied on by execution from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed.

## CHAPTER CXXII.

### OF REPLEVIN.

Section
1809. Plaintiff may claim delivery of property: when.
1810. Affidavit made by plaintiff; its contents.
1811. Justice to order delivery; order indorsed on the affidavit; bond to be given.
1812. On receipt of order, affidavit and bond, sheriff to take property.
1813. Defendant may except to sureties.
1814. Defendant may require return of property upon giving bond.
1815. Officer responsible until defendant's sureties justify.
1816. Action of officer when property is concealed.
1817. Disposition of the property.
1818. Proceedings in adverse claims to property.
1819. Officer to make return of affidavit, etc., to the justice. when.

Sec. 1809. The plaintiff in an action to recover the possession of personal property, may, at the time of issuing such summons, or at any time before answer, claim the immediate delivery of such property as provided in this act.

Sec. 1810. When a delivery is claimed, an affidavit shall be be made by the plaintiff, or by some one in his behalf, showing:

1. That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth.

2. That the property is wrongfully detained by the defendant.

3. The alleged cause of the detention thereof, according to his best knowledge, information and belief.

4. That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure, and

5. The actual value of the property.

Sec. 1811. The justice shall thereupon, by an indorsement in writing upon the affidavit, order the sheriff or any constable of the county, to take the same from the defendant and deliver it to the plaintiff upon receiving a proper bond.

Sec. 1812. Upon the receipt of the affidavit and order with a bond, executed by two or more sufficient sureties, approved by the sheriff or constable, to the effect that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also without delay, serve on the defendant a copy of the affidavit, order and bond, by delivering the same to him personally if he can be found within the county, or to his agent from whose possession the property is taken, or if neither can be found in the county, by leaving them at the usual abode of either within the county, with some person of suitable age and discretion; or if neither have any known place of abode in the county, by putting them into the post office, directed to the defendant at the post office nearest to him.

SEC. 1813. The defendant may, within two days after the service of a copy of the affidavit, order and bond, give notice to the officer that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the justice; and the officer shall be responsible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they justify, or new sureties be substituted, and they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

SEC. 1814. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the officer a bond executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required, within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter.

SEC. 1815. The defendant's sureties, upon one day's notice to the plaintiff, or his attorney, shall justify before the justice, and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is complete, or expressly waived, and may retain the property until that time, but if they, or others in their place, fail to justify at the time appointed, he shall deliver the property to the plaintiff.

SEC. 1816. If the property, or any part thereof, be concealed in a building or inclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or inclosure to be broken open and take the property into his possession.

SEC. 1817. When the officer shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 1818. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by a bond executed by two sufficient sureties accompanied by their affidavits, that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the officer, unless made as aforesaid, and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

Sec. 1819. The officer shall return the order and affidavit with his proceedings thereon, to the justice within five days after taking the property mentioned therein.

## CHAPTER CXXIII.

### FORCIBLE ENTRY AND DETAINER.

SECTION
1820. Entry into lands, in what cases and how made.
1821. Person entitled to premises to be restored to possession.
1822. Complaint in writing made to justice of peace.
1823. Justice to issue summons.
1824. How summons shall be served.
1825. Jury to be summoned.
1826. Jurors not attending, etc., justice may order others summoned.
1827. Plaintiff failing to attend, to be non suited.
1828. Defendant failing to appear, case may be tried or continued.
1829. If defendant appear, to file answer in writing and under oath.
1830. Mode of trial, and proof required.
SECTION
1831. Proceedings on finding defendant guilty.
1832. Verdict to be in writing; form of.
1833. Proceedings in case of verdict of "not guilty."
1834. New trial granted; when.
1835. Title shall in no issue be enquired into.
1836. One year's quiet possession a plea in bar.
1837. Of recovering possession of premises, after termination of lease.
1838. For causes mentioned in the last section, jury not necessary.
1839. In such action, defendant may pay the amount due.
1840. Justice to have power to continue, as in other cases.
1841. Nothing in this act prevents party injured from bringing another action.

Sec. 1820. No person shall make an entry into lands, tenements, or other possessions, but in cases where entry is given by law; and in such cases he shall not enter with force, but only in a peaceable manner.

Sec. 1821. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, the person entitled to the premises may be restored to the possession thereof, in the manner hereinafter provided.

Sec. 1822. The person entitled to the possession of the premises may make complaint in writing, on oath, to a justice of the peace of the county in which the premises are situated, setting forth that the person complained of is in possession of the lands or tenements in question—describing them and that he entered into the same with force, or that he unlawfully holds the same by force, as the case may be, and the time when.

Sec. 1823. Upon receiving such complaint, the justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before the justice on a day in such summons named.

Sec. 1824. The summons shall be served by the officer as in other cases, and at the same time a copy of the complaint shall, in like manner, be served on the defendant. The officer shall, in his return, state the time and manner of such service.

Sec. 1825. The justice shall, at the time of issuing the summons, issue a venire to the sheriff or constable, commanding him to summon six good and lawful men, qualified to serve as jurors, to appear at the time and place appointed for the trial of the complaint, to be a jury in the case. Such venire shall be returned on or before the day appointed for the trial; and the officer shall endorse thereon the list of the jurors summoned.

Sec. 1826. If a sufficient number of jurors do not attend, or attending, are set aside by challenging peremptorily, or for cause, the justice may order the sheriff or constable to complete the number, by summoning other jurors.

Sec. 1827. If the plaintiff fail to appear at the time appointed for hearing the complaint, in person, by agent or attorney, and prosecute his action, he shall be non-suited, and the defendant shall recover his costs.

Sec. 1828. If the defendant fail to appear at the time appointed for hearing the complaint, the justice may proceed ex-parte, or continue the cause, at his discretion; but he shall not continue it for a longer time than ten days, nor to any other place than that named in the summons for the hearing of the cause.

Sec. 1829. If the defendant appear, he shall, before the trial, file his answer in writing, and under oath, in which he shall set forth his defense.

Sec. 1830. The jury shall consist of six persons, unless the parties agree on a less number; and when duly empanneled and sworn, the justice shall cause the complaint to be read to them, and then call on the plaintiff to support the same by proof, but the plaintiff shall not be required to make further proof of the forcible entry and detainer than that he was lawfully possessed of the premises, and that the defendant unlawfully entered and detains the same.

Sec. 1831. If the jury on the trial find the defendant guilty, the justice shall record the verdict, and give judgment thereon, with costs, and also issue a writ of restitution, directed to the sheriff or constable, to cause the plaintiff to be re-possessed of the premises, to which shall be added a clause commanding the officer to levy the costs of the goods and chattels of the defendant.

Sec. 1832. The verdict of the jury shall be in writing, and shall be in the form, or to the effect following:

"We, the jury, find the defendant guilty," or, if in favor of the defendant, "not guilty of said forcible entry and detainer, in manner and form as the plaintiff in his complaint hath alleged;" or the jury may find the defendant guilty as to part, and not guilty as to the balance of the charge, as laid down in the plaintiff's complaint; if so, they shall state it specially in their verdict.

Sec. 1833. When the jury find a verdict of "not guilty" for the defendant, the verdict shall be so recorded, and the justice shall enter judgment against the plaintiff for costs, and issue execution therefor against his goods and chattels.

Sec. 1834. In all cases of forcible entry and detainer, the justice shall have power to grant a new trial, if the same be applied for on the day the verdict is rendered,—and good cause be shown on affidavit therefor, which shall be within ten days after granting the same; but not more than one new trial shall be granted to either party.

Sec. 1835. The title to land shall in no case be inquired into, on any complaint of forcible entry or detainer.

Sec. 1836. One year's quiet possession of the premises, immediately preceding the filing of the complaint, by the party complained of, or those under whom he holds, may be pleaded by any defendant in bar of the plaintiff's demand of possession; unless the estate therein be ended.

Sec. 1837. The person entitled to any premises, may recover possession thereof in the manner hereinbefore provided, in the following cases:

1. When any person shall hold over any lands or tenements after the time for which they are demised or let to him, or to the person under whom he holds, or contrary to the conditions or covenants of any lease or agreement under which he holds.

2. When any rent shall have become due on any such lease or agreement, and the tenant or person in possession, shall have neglected or refused, for ten days after demand for the possession, made in writing, to deliver up possession of the premises, or to pay the rent so due.

3. When any person shall continue in possession of any premises, sold by virtue of any mortgage or execution, after the sheriff's deed therefor shall have been recorded.

4. When any tenant at will, or by sufferance, shall hold over after the determination of his estate, by a notice to quit, as provided by law.

Sec. 1838. When the plaintiff shall file a complaint for an unlawful detainer, for any one of the causes mentioned in the last section, it shall not be necessary for the justice to issue a venire for a jury, at the time of issuing the summons; but the justice shall, at the time of trial proceed to hear and determine the complaint, unless either party shall call for a trial by jury, in which case the justice shall issue a venire, in the same manner, and the same proceedings shall thereupon be had as in cases of forcible entry and detainer.

Sec. 1839. When the action shall be brought to recover the possession of premises demised or let, for the reason that the tenant or person in possession has refused or neglected to pay the rent due, it shall be lawful for the defendant, at any time before judgment, to pay to the justice for plaintiff, the rent then in arrear, with interest and the costs of the action, and thereupon, no writ of restitution shall be awarded.

Sec. 1840. The justice shall have the same power to continue actions for forcible entry and detainer, as in other cases.

Sec. 1841. Neither the judgment nor any thing contained in this chapter shall bar or prevent the party injured, from bringing an action to recover the possession of the premises, or to recover damages for the trespass or injury committed against the aggressor, or party offending.

## CHAPTER CXXIV.

### OF PROCEEDINGS FOR CONTEMPT BEFORE JUSTICES OF THE PEACE.

Section
1842. Justice may punish for contempt in certain cases.
1843. Contempt, how punished.
1844 Person to have an opportunity to be heard.
1845. If offender present, summarily arraigned.
Section
1846. Form of warrant for contempt.
1847. Proceedings in case of conviction; form of judgment.
1848. Mode of enforcing judgment.

Sec. 1842. In the following cases, and no others, a justice of the peace may punish for contempt:

1. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tend to interrupt such proceedings, or impair the respect due to his authority.

2. Persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice.

3. Persons guilty of resistance or disobedience to any lawful order or process made or issued by him.

Sec. 1843. Punishment for contempt may be by fine, not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding two days, at the discretion of the justice, unless otherwise provided by statute.

Sec. 1844. No person shall be punished for a contempt before a justice of the peace, until an opportunity shall have been given to him to be heard in his defense; and for that purpose the justice may issue his warrant to bring the offender before him.

Sec. 1845. If the offender be present, he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon.

Sec. 1846. The warrant for contempt may be in the following form:

Territory of Washington, } ss.
——— County, }

To the sheriff or any constable of said county:

In the name of the United States you are hereby commanded to apprehend A B, and bring him before J P, one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt alleged to have been committed on the — day of —, A. D., 18—, before the said justice, while engaged as a justice of the peace in a judicial proceeding.

Dated this — day of —, A. D., 18—.

J P, Justice of the Peace.

Sec. 1847. Upon the conviction of any person for contempt, an entry thereof shall be made in the docket of such justice, stating the particular circumstances of the offense, and the judgment rendered thereon, and may be in the following form:

Territory of Washington, } ss.
——— County, }

Whereas, on the — day of —, A. D., 18—, while the undersigned, one of the justices of the peace for said county, was engaged in the trial of an action between C D, plaintiff, and E F, defendant, in said county, A B, of the said county, did interrupt the said proceedings and impair the respect due to the authority of the undersigned, by (here describe the cause particularly.) And whereas, the said A B was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof. And whereas, the said A B did not show cause against the said charge—be it therefore ordered that the said A B is adjudged to be guilty and is convicted of the contempt aforesaid, and is adjudged by the undersigned to pay a fine of — dollars, (or be imprisoned, etc.)

Dated this — day of —, A. D., 18—.

J P, Justice of the Peace.

Sec. 1848. If any person convicted of a contempt be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice. If he be adjudged to pay a fine, a process may be issued to collect the same; and when so collected, it shall forthwith be paid by the justice into the county treasury.

## CHAPTER CXXV.

### CERTIORARI AND PROCEEDINGS THEREON.

SECTION
1849. Proceedings may be removed to district court on certiorari.
1850. When, and in what manner a certiorari can be obtained.
1851. Such writ to be issued by the clerk, as of course.
1852. How served.
SECTION
1853. Justice to make special return.
1854. Justice may be compelled to make or amend such return.
1855. When case may be brought to argument.
1856. Judgment of appellate court, how given.
1857. Proceedings in case of reversal of judgment already collected.

SEC. 1849. If any person shall conceive himself injured by error in any process, proceeding, judgment or order given by any justice of the peace within this territory, it shall be lawful for such person to remove such process, proceeding, judgment or order to the district court as hereinafter provided.

SEC. 1850. Within twenty days after the rendition of the judgment, or if the error be committed after judgment, then within twenty days after such error was committed, the party applying for such certiorari, his agent or attorney, shall file in the office of the clerk of the district court for the proper county, an affidavit, stating that in his belief there is reasonable cause for granting such certiorari, for error in such judgment or proceeding, (setting forth the ground of error alleged,) and that the application is made in good faith, and not for the purpose of delay, and further shall execute a bond to the adverse party, with one or more sureties, to be approved by the clerk in double the amount of the judgment and costs rendered before the justice, to the effect that the party applying will prosecute the writ of certiorari to final judgment and will abide any order the court may make therein.

SEC. 1851. Upon complying with the provisions of the preceding section, the party applying shall be entitled to such writ; which shall be issued by the clerk, as of course, and no application to the district court or the judge thereof, shall be necessary in the premises.

SEC. 1852. The writ of certiorari shall be served on the justice within ten days after it has been issued; and if a bond be executed in pursuance of the last section, and a certificate of the clerk to that effect be served on the justice, all further proceedings in law in such case shall cease; and if the execution shall have issued on such judgment, the justice shall immediately recall the same.

SEC. 1853. Upon the service of a writ of certiorari to reverse a judgment, it shall be the duty of the party serving the same, to deliver at the same time to the justice, a copy of the affidavit on which the certiorari was procured, and the justice shall make a special return as to all the facts contained in such affidavit and of the proceedings in the case, and annex a copy thereof to the writ, and shall file the same with the clerk of the district court within ten days after the service of the writ, together with all the papers in the action; and he shall also certify the time when the writ was served upon him.

SEC. 1854. The district court shall have power to compel such justice to make or amend such return by rule, attachment or mandamus, as the case may require.

SEC. 1855. When the writ of certiorari and return shall be filed with the clerk, the case may be brought on for argument before the district court at any time thereafter, according to the statutes relating thereto.

Sec. 1856. The district court shall, after hearing the case, give judgment as the right of the matter may appear, without regarding technical omissions, imperfections, or defects in the proceedings, before the justice which did not affect the merits and may affirm or reverse the judgment in whole or in part, and issue execution as upon other judgments rendered before said court.

Sec. 1857. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, such court shall award restitution of the amount so collected, with interest from the time of collection, and execution may issue therefor.

## CHAPTER CXXVI.

### OF APPEALS TO THE DISTRICT COURT.

Section
1858. Who may appeal.
1859. When and how appeal may be taken.
1860. In case of an appeal from a judgment for the delivery of the possession of premises, a writ of restitution to be issued, unless appellant executes a bond.
1861. Appeal allowed, further proceedings before justice suspended.
1862. Property taken on execution released, and defendant discharged from imprisonment.

Section
1863. When and in what manner the district court, possessed of cause.
1864. Issue to be tried on same pleadings, unless otherwise directed.
1865. District court may compel justice to make transcript of proceedings, and amend transcript when defective, etc.
1866. Appeal not dismissed on account of defective bond, when.
1867. Judgment against appellant, how rendered.

Sec. 1858. Any person considering himself aggrieved by any judgment or decision of a justice of the peace, may, in person or by his agent, appeal therefrom to the district court of the same county where the judgment was rendered, or the decision made.

Sec. 1859. Such appeal shall be taken by filing a notice of appeal with the justice and serving a copy on the adverse party or his attorney, and filing a bond or undertaking as in the next section provided, within twenty days after the judgment is rendered or the decision made. No appeal shall be allowed in any case unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by the justice, with one or more sureties, in the sum of one hundred dollars, to the effect that the appellant will pay all costs that may be awarded against him on the appeal; or if a stay of proceedings before the justice be claimed, a bond or undertaking, with two or more sureties, to be approved by the justice, in a sum equal to twice the amount of the judgment and costs, to the effect that the appellant will pay such judgment, including costs, as may be rendered against him on the appeal.

Sec. 1860. If the judgment appealed from direct the delivery of the possession of premises in an action of forcible entry and detainer, or of a mining claim, a writ of restitution may be issued and executed, unless a bond be entered into on the part of the appellant with two or more sureties to the effect that during the possession of such premises or mining claim by the appellant, he will not commit, nor suffer to be committed, any waste, destruction or injury thereon, and that if the judgment be affirmed he will pay the value of the use and occupation of the premises or mining claim, from the time of the appeal until the delivery of the possession thereof, and all costs of the appeal. The amount of such bond shall be fixed by the justice before whom the action was tried.

Sec. 1861. Upon appeal being made, and a bond filed to stay all proceedings, the justice shall allow the same, and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall thereupon be suspended; and if, in the meantime execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed.

Sec. 1862. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution; and if the body of the defendant have been taken on execution, he shall be discharged from imprisonment.

Sec. 1863. On or before the first day of the term of the court, next after the appeal has been taken, the justice shall furnish the district court with a transcript of all the entries made in the justice's docket relating to the case, together with all the process and other papers relating to the action, and filed with the justice, [which shall be certified by such justice] to be correct, and upon the filing of such transcript, the district court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court except as herein otherwise provided.

Sec. 1864. The issue before the justice shall be tried in the district court without other or new pleadings, unless otherwise directed by the court.

Sec. 1865. Upon an appeal being made and allowed, the district court may by rule and attachment, compel the justice to make and deliver to the appellant a certified transcript of the proceedings, upon paying to such justice the fees allowed by law for making such transcript, and whenever the court is satisfied that the return of the justice is substantially erroneous or defective, it may by rule and attachment compel him to amend the same.

Sec. 1866. No appeal allowed by a justice shall be dismissed on account of the bond being defective, if the appellant will, before the motion is determined, execute and file in the district court such a bond as he should have executed at the time of taking the appeal, and pay all costs that shall have accrued by reason of such defect.

Sec. 1867. In all cases of appeal to the district court, if on the trial anew in such court, the judgment be against the appellant, in whole or in part, such judgment shall be rendered against him and his sureties in the bond for the appeal.

## CHAPTER CXXVII.

### TITLE TO LAND.

SECTION
1868 When title comes in question, how to proceed.

Sec. 1868. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and shall certify and return to the district court of the county, a transcript of all the entries made in his docket, relating to the cause, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the parties shall file their pleadings, and the district court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the cost shall abide the event of the suit.

## CHAPTER CXXVIII.

### OF WITNESSES AND DEPOSITIONS.

SECTION
1869. Witnesses may be subpœnaed within twenty miles.
1870. By whom and how subpœna served.
1871. Witness failing to appear, attachment may issue.
1872. Attachment, to whom directed, and fees of officer, by whom paid.
1873. Person subpœnaed neglecting to appear, liable for damages.
1874. Party to action may be examined as witness at instance of adverse party.

SECTION
1875. Testimony of party may be rebutted.
1876. Party refusing to testify, judgment may be taken.
1877. Party examined by adverse party may be examined on own behalf.
1878. When depositions may be taken.
1879. Notice of, how served, and deposition how taken, certified and returned.
1880. When depositions may be read on trial.
1881. Changes of venue may be allowed.

SEC. 1869. A subpœna issued by a justice of the peace shall be valid to compel the attendance of a witness in the justice's court, if such witness be within twenty miles of the place of trial.

SEC. 1870. A subpœna may be served by any person above the age of eighteen years, by reading it to the witness, or by delivering to him a copy at his usual place of abode.

SEC. 1871. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpœnaed to appear before him in an action, shall have failed, without a just cause, to attend as a witness, in conformity to such subpœna, and the party in whose behalf such subpœna was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have the power to issue an attachment to compel the attendance of such witness; *Provided*, That no attachment shall issue against a witness in any civil action, unless his fees for mileage and one day's attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpœna.

SEC. 1872. Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay all such costs.

SEC. 1873. Every person subpœnaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpœnaed, for all damages which such party may have sustained by reason of his non-appearance: *Provided*, That such witness had the fees allowed for mileage and one day's attendance paid, or tendered him, in advance, if demanded by him at the time of the service.

SEC. 1874. A party to an action may be examined as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken.

SEC. 1875. The examination of a party thus taken, may be rebutted by adverse testimony.

SEC. 1876. If a party refuse to attend and testify at the trial, or give his deposition before trial, when required, his complaint, answer or reply, may be stricken out, and judgment taken against him.

SEC. 1877. A party examined by an adverse party may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquires put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received.

SEC. 1878. Either party, in an action depending before a justice of the peace, may cause the deposition of a witness therein to be taken, when such witness resides, or is about to go more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial.

SEC. 1879. The notice shall be served, and the deposition taken, certified, and returned, according to the law regulating the taking of depositions to be read in the district court.

SEC. 1880. The justice shall allow every deposition taken, certified and returned according to law, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally before him, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice, that the witness, whose deposition is so offered:

1. Is dead, or resides more than twenty miles from the place of trial; or,
2. Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity.
3. That he has gone more than twenty miles from the place of trial, without the consent or collusion of the party offering the deposition.

SEC. 1881. Change of venue may be allowed for the same causes for which they are allowed in the district court.

## CHAPTER CXXIX.

### AN ACTION TO RECOVER POSSESSION OF A MINING CLAIM.

SECTION
1882. By whom and in what manner complaint to be made.
SECTION.
1883. Mode of proceeding.
1884. Custom, in absence of statute, governs.

SEC. 1882. Any person claiming the right to the occupancy and possession of a mining claim, withheld by another, may make complaint in writing, and on oath, to a justice of the peace of the county in which the mining claim is situated, setting forth the fact constituting his right to such possession and occupancy and such a description of the mining claim as can conveniently be given, and that the defendant wrongfully withholds the possession from him.

SEC. 1883. Upon filing such complaint, the same proceeding shall be had before the justice as in actions for forcible entry and detainer, and if the judgment be rendered for the plaintiff a writ of restitution may in like manner be issued, to place the plaintiff in possession of such mining claim.

SEC. 1884. In an action to recover possession of a mining claim, proof shall be admitted of the customs, usages or regulations established and in force at the bar or diggings embracing such claim; and such customs, and regulations, when not in conflict with the laws of the United States or this territory, shall govern the decision of the action.

# CHAPTER CXXX.

## FORMS IN CIVIL ACTIONS IN JUSTICES' COURT.

Section
1885. Forms: Warrant; subpœna; execution; venire for a jury; execution against the body; execution against the principal and surety after stay of execution; order in replevin; writ of attachment; forcible entry and detainer; summons in same.

Section
1885. Forms: Writ of restitution in forcible entry and detainer; arrest; undertaking for arrest; replevin; undertaking in replevin; attachment; undertaking in attachment; undertaking to discharge attachment; constable; undertaking to indemnify constable.

Sec. 1885. The following or equivalent forms may be used by justices of the peace, in civil actions and proceedings under this chapter, to-wit:

### FORM OF A WARRANT.

Territory of Washington, }
County of ——, } ss.

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to take the body of C D, if he be found in your county, and bring him forthwith before the undersigned, one of the justices of the peace in and for said county, at his office in —, to answer A B, in a civil action; and you are hereby commanded to give notice thereof to the said plaintiff, or his agent or attorney; and have you there and then this writ.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF SUBPŒNA.

Territory of Washington, }
County of ——, } ss.

To———:

In the name of the United States, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, on the — day of —, 18—, at — o'clock in the — noon, at his office in —, to give evidence in a certain cause, then and there to be tried, between A B, plaintiff and C D, defendant, on the part of (the plaintiff, or defendant as the case may be.)

Given under my hand this — day of —, 18—.

J. P., Justice of the Peace.

### FORM OF EXECUTION.

Territory of Washington, }
County of——, } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C D, for the sum of — dollars, and — dollars costs of suit, was recovered on the — day of —, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B. These are, therefore, in the name of the United States, to command you to levy on the goods and chattels of the said C D (excepting such as the law exempts), and make sale thereof according to law, to the amount of said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A B, for his debt, interests and costs.

Given under my hand this — day of — 18—.

J P, Justice of the Peace.

### FORM OF VENIRE FOR A JURY.

TERRITORY OF WASHINGTON, } ss.
——— County, }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to summon six good and lawful men of your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on the — day of —, 18—, at — o'clock in the —noon of said day, at his office in —, to make a jury for the trial of a civil action, between A B plaintiff, and C D defendant, and have you then and there this writ.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF EXECUTION AGAINST THE BODY.

TERRITORY OF WASHINGTON, } ss.
——— County, }

To the sheriff or any constable of said county:

Whereas, judgment against C D for the sum of — dollars, and for — dollars, costs of suit, was recovered on the — day of —, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B, and an execution against his property returned unsatisfied; these are, therefore, in the name of the United States to command you to take the body of the said C D, and him convey and deliver to the keeper of the jail of said county, who is hereby commanded to receive and keep the said C D in safe custody in prison, until the aforesaid sum, and all legal expenses, be paid and satisfied, or until he be discharged therefrom by due course of law; and of this writ make due return within thirty days.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION.

TERRITORY OF WASHINGTON, } ss.
County of ———, }

To the sheriff or any constable of said county:

Whereas, judgment against C D for the sum of — dollars, and for — dollars, costs of suit, was recovered on the — day of —, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B; and whereas, on the — day —, 18—, E F became surety to pay said judgment and costs, in — month from the date of the judgment aforesaid, agreeably to law, in the payment of which the said C D and E F have failed; these are, therefore, in the name, etc., [as in the common form.]

### FORM OF ORDER IN REPLEVIN.

TERRITORY OF WASHINGTON, } ss.
County of ———, }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to take the personal property mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless before such delivery, the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF A WRIT OF ATTACHMENT.

TERRITORY OF WASHINGTON, } ss.
County of ——, }

To the sheriff or any constable of said county:

In the name of the United States, you are commanded to attach, and safely keep, the goods and chattels, moneys, effects and credits of C D, (excepting such as the law exempts), or so much [thereof] as shall satisfy the sum of — dollars, with interest and cost of suit, in whosesoever hands or possession the same may be found in your county, and to provide that the goods and chattels so attached may be subject to further proceeding thereon, as the law requires; and of this writ make legal service and due return.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF SUMMONS IN FORCIBLE ENTRY AND DETAINER.

TERRITORY OF WASHINGTON, } ss.
County of ———, }

To the sheriff or any constable of said county:

Whereas, A B, of —, hath exhibited unto the undersigned, one of the justices of the peace in and for the said county, a complaint against C D, for a forcible entry and detainer of the following premises, to-wit: —— You are hereby commanded to summon the said C D, if he be found in your county, to appear before the undersigned, on the — day of —, 18—, at — o'clock in the —noon, at his office in —, then and there to make answer to, and defend against the complaint aforesaid. Anb you are also hereby commanded to serve a copy of the said complain no the said C D; and upon this writ make due return with your doings thereon.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF WRIT OF RESTITUTION IN FORCIBLE ENTRY AND DETAINER.

TERRITORY OF WASHINGTON, } ss.
County of ———, }

To the sheriff or any constable of said county:

Whereas, A B did make complaint in writing to the undersigned, a justice of the peace in and for said county. against C D of the said county that he had been guilty of a forcible entry and detainer of a certain tract of land (or other possessions.) of the said A B: And whereas, a jury was empanneled and sworn to enquire of said complaint, and did return their verdict that the said C D was guilty of a forcible entry and detainer of the following described tract of land, to-wit: (here describe the premises of which the defendant is found guilty of forcibly entering and detaining); And whereas. judgment was entered thereon by said justice, and that the said A B should have restitution of the premises; therefore, in the name of the United States, you are hereby commanded to cause the said C D to be removed forthwith from the premises aforesaid, and that the said A B have peaceable restitution of the same, and also that you levy of the goods and chattels of C D found in your county, the sum of — dollars, being the amount of costs on the trial aforesaid, together with — dollars for this writ, and also your own fees, and make return of this writ within thirty days next after the date thereof.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF UNDERTAKING FOR ARREST.

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for — county, for a warrant to arrest C D, defendant, founded upon an affidavit of the said plaintiff, setting forth that C D, (here state the cause for the arrest); Now, therefore, we, A B, plaintiff, and E F, acknowledge ourselves bound to C D, in the sum of — dollars, to pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of — dollars.

Dated this — day of —, 18—. A B, E F.

### FORM OF UNDERTAKING IN REPLEVIN.

Whereas, A B, plaintiff, has commenced an action before J P, one of the justices of the peace in and for — county, against C D, defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff, to-wit: [here set forth the property claimed.] Now, therefore we, A B, plaintiff, E F and G H, acknowledge ourselves bound unto C D in the sum of — dollars, for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the — day of —, 18—. A B, E F, G H.

### FORM OF UNDERTAKING IN ATTACHMENT.

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for —— county, for a writ of attachment against the personal property of C D, defendant; Now, therefore, we, A B, plaintiff, and E F, acknowledge ourselves bound to C D in the sum of — dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment and not exceeding the sum of — dollars.

Dated the — day of —, 18—. A B, E F.

### FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT.

Whereas, a writ of attachment has been issued by J P, one of the justices of the peace in and for —— county, against the personal property of C D, defendant, in an action in which A B is plaintiff; Now, therefore, we, C D, defendant, E F, and G H, acknowledge ourselves bound unto J K, constable, in the sum of — dollars, [double the value of the property], engaging to deliver the property attached, to-wit: [here set forth a list of articles attached,] or pay the value thereof to the sheriff or constable, to whom the execution upon a judgment obtained by plaintiff in the aforesaid action may be issued.

Dated this — day of —, 18—. C D, E F, G H.

### FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE ON CLAIM OF PROPERTY BY A THIRD PERSON.

Whereas, L M, claims to be owner of, and have the right to possession of certain personal property, to-wit: [here describe it] which has been taken by J K, constable in — county, upon an execution by J P, justice of the peace in and for the county of —, upon a judgment obtained by A B, plaintiff, against C D, defendant; Now, therefore, we, A B, plaintiff, E F, and G H, acknowledge ourselves bound unto the said J K, constable, in the sum of — dollars, to indemnify the said J K against such claim. A B, E F.

## CHAPTER CXXXI.

### CRIMINAL PRACTICE AND JURISDICTION.

SECTION
1886. Jurisdiction of justices of peace.
1887. To issue warrant on complaint being made.
1888. When offense committed within view of justice.
1889. Proceedings of justice on return of warrant.
1890. Prisoner or territory may demand jury.
1891. Finding of jury.
1892. Defendant may plead guilty.
1893. No judgment entered without examination of witnesses.
1893. In case of injury to person party injured must be a witness.
1894. What witnesses to be summoned.
1895. Continuance, on what terms granted.
SECTION
1896. Judgment on conviction.
1897. Stay of execution.
1898. Person convicted may appeal.
1899. Witnesses to recognize, or names indorsed.
1899. Justice to transmit proceedings to court appealed to.
1900. Appellant not required to advance fees on appeal.
1900. If convicted may be required to pay costs of prosecution.
1900. Proceedings on failure to enter and prosecute appeal.
1901. Justice to pay over to the county treasurer certain moneys.

SEC. 1886. The jurisdiction of justices of the peace in criminal prosecutions, shall be co-extensive with their respective counties, and they shall have concurrent jurisdiction with the district courts in affrays, assault and battery, violation of estray laws, obstructions of highways and bridges, charging extra tolls at ferries and bridges, neglect of roads by supervisors, public indecency, having obscene books, pamphlets for exhibition or otherwise, forcible entry and detainer, malicious trespass, and in case of petit larceny, in all misdemeanors where the offense charged is not punishable by imprisonment, or by a fine greater than one hundred dollars, and public nuisance; and they shall also have jurisdiction over all criminal cases, coming under any city or town ordinance, and on conviction, shall have power to fine the person so offending in any sum not exceeding one hundred dollars.

[SEC. 1887. Every person who shall by words, signs or gestures willfully provoke or attempt to provoke another person to commit an assault and battery or other breach of the peace, shall be deemed guilty of misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding twenty-five dollars and stand committed until such fine and costs are paid. Justices of the peace shall have exclusive original jurisdiction of prosecutions under this section within their respective counties.]

SEC. 1888. Any justice shall, on complaint on oath in writing before him, charging any person with the commission of any crime or misdemeanor, of which he has jurisdiction, issue a warrant for the arrest of such person, and cause him to be brought forthwith before him for trial.

SEC. 1889. When any offense is committed in view of any justice he may, by verbal direction to any constable, or if no constable be present, to any citizen, cause such constable or citizen to arrest such offender, and keep him in custody for the space of one hour, unless such offender shall sooner be taken from such custody by virtue of a warrant issued on complaint on oath. But such person so arrested, shall not be confined in jail, nor put upon any trial, until arrested by virtue of such warrant. And on the return of any warrant issued by him, it shall be the duty of the justice to docket the cause, and unless continuance be granted, forthwith to hear and determine the cause, and either acquit, convict and punish or hold to bail the offender, if the offense be bailable and prove to be one which should be tried in the district court, or in default of bail, commit him to jail, as the facts and law may justify.

Sec. 1890. In all trials for offenses within the jurisdiction of a justice of the peace, the prisoner or the territory may demand a jury, which shall consist of six, or a lesser number, agreed upon by the territory and accused to be empanneled and sworn as in civil cases, or the trial may be by the justice. When the complaint is for a crime or misdemeanor in the jurisdiction of the district court, the justice hears the case as a committing magistrate, and no jury shall be allowed.

Sec. 1891. Such justice or jury, if they find the prisoner guilty, shall assess his punishment, or if in their opinion the punishment they are authorized to assess, is not adequate to the offense, they may so find; and in such case, the justice shall order such defendant to enter into recognizance to appear at the next term of the court, having jurisdiction thereof, and shall also recognize the witnesses, and proceed as provided by the act regulating criminal proceedings in like cases.

Sec. 1892. The defendant may plead guilty to any offense charged.

Sec. 1893. No justice shall assess a fine or enter a judgment thereon until a witness or witnesses have been examined, to state the circumstances of the transaction; and he shall have power either to enter judgment and assess a fine, or order the defendant to enter into recognizance to appear at the next term of the district court; and where the offense charged is an injury to the person or property, the party injured in person or property must be present and examined as a witness, unless prevented by sickness, or beyond the reach of process.

Sec. 1894. In all cases arising under this act, it shall be the duty of the justice of the peace to summon the injured party, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment if necessary.

Sec. 1895. Continuance may be granted, either on application of the prisoner, or the prosecuting attorney, or prosecuting witness, under the same rules as in civil cases; the cost of such continuance shall abide the event of the prosecution in all cases and the justice shall recognize the defendant and the witnesses to appear from time to time, in the same manner as is provided in other criminal examinations before him.

Sec. 1896. In all cases of conviction, under the provisions of this act, the justice shall enter judgment for the fine and costs against the defendant, and may commit him to jail to be placed at hard labor until the judgment is satisfied, or the payment thereof be secured, and further proceedings therein shall be had as in like cases in the district court.

SEC. 1897. Every defendant may stay the execution for the fine and costs for thirty days, by procuring sufficient sureties, to be approved by the justice, to enter into recognizance before him for the payment of the fine and costs; the entry of such recognizance shall be made on the docket of the justice, and signed by the sureties, and shall have the same effect as a judgment, and if the same be not paid in thirty days, the justice shall proceed as in like cases in the district court.

SEC. 1898. Every person, convicted before a justice of the peace of any offense, may appeal from the sentence within ten days thereafter, to the district court then next to be holden for the district embracing the county. The appeal shall be taken by orally giving notice thereof at the time the judgment is rendered, or by serving a written notice thereof upon the justice at any time after the judgment and within the time allowed for taking the appeal; when the notice is given orally, the justice shall enter the same in his docket. The appellant shall be committed to abide the sentence of said justice until he shall recognize or give a bond to the territory, in such reasonable sum with such sureties as said justice may require, with condition to appear at the court appealed to, and there prosecute his appeal, and to abide the sentence of the court thereon if not revised by a higher court, and in the mean time to be of good behavior.

SEC. 1899. The justice shall also recognize the witnesses, or if they are not present, endorse their names on the copy of proceeding. The justice, on such appeal, shall make a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance and an abstract bill of the costs, to the clerk of the court appealed to, who shall issue a subpœna for the witnesses, if they are not under recognizance.

SEC. 1900. The appellant shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same; but if convicted in the appellate court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of the sentence, to pay the costs of prosecution. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the district court may award sentence against him for the offense whereof he was convicted, in like manner as if he had been convicted thereof in that court; and if he be not then in custody, process may be issued to bring him into court to receive sentence.

SEC. 1901. It shall be the duty of every justice, on the first Mondays in January and July in every year, and on going out of office, to pay over to the treasurer of his county all money he may have received on account of fines, and all fees which may have remained unclaimed in his hands for twelve months; and he shall, at the same time, deliver to such treasurer a statement in writing, showing by items the sources from which such money was derived, and shall append thereto an affidavit that he has received no other money for fines, not before paid over to such treasurer, and has no other fees unclaimed for twelve months, in his hands; and the treasurer's receipt therefor he shall file with the auditor, who shall give him a quietus.

# CHAPTER CXXXII.

## FORM OF PROCEEDINGS IN CRIMINAL CASES.

SECTION
1902. Forms: Warrant; search warrant; commitment when justice shall discover he has not jurisdiction; peace warrant.
SECTION
1902. Forms: Sentence; commitment upon conviction; certificate of execution.

SEC. 1902. The following or equivalent forms may be used by justices of the peace in criminal proceedings under this act:

### FORM OF WARRANT.

TERRITORY OF WASHINGTON, } ss.
———— County, }

To the sheriff or any constable of said county:

Whereas, A B, has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, [that on the —day of— 18—, at — in said county,] [here insert the substance of the complaint, whatever it may be.] Therefore, in the name of the United States, you are commanded forthwith to apprehend the said C D, and bring him before me, to be dealt with according to law.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF A SEARCH WARRANT.

TERRITORY OF WASHINGTON, } ss.
———— County, }

To the sheriff or any constable of said county:

Whereas A B has this day made complaint on oath to the undersigned, one of the justices of the peace in and for said county, that the following goods and chattels, to wit: [here describe them,] the property of the said A B, have been within — days past, or were on the — day of — by some person or persons unknown, stolen, taken and carried away out of the possession of the said A B, in the county aforesaid; and also that the said A B verily believes that the said goods or a part thereof, are concealed in or about the house of C D, in said county, [describe the premises to be searched.] Therefore, in the name of the United States, you are commanded that with the necessary and proper assistance you enter into the said house, [describe the premises to be searched,] and then diligently search for the said goods and chattels; and if the same, or any part thereof, be found on such search, bring the same, and also the said C D, forthwith before me, to be disposed of according to law.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF COMMITMENT WHERE JUSTICE ON THE TRIAL SHALL FIND THAT HE HAS NOT JURISDICTION IN THE CASE.

TERRITORY OF WASHINGTON, } ss.
———— County, }

To any constable, and the keeper of the jail of said county:

Whereas, C D of ——etc., has been brought this day before the undersigned, one of the justices of the peace in and for said county, charged on the oath of A B with having, on the — day of — 18—, in said county, committed the offense of, [here state the offense charged in the warrant,] and in the progress of the trial of said charge, it appearing to the said justice that the said C D has been guilty of the offense of, [here state the new offense found on the trial,] committed at the time and place aforesaid; and whereas, the said C D has failed to give bail in the sum of — dollars, for his appearance to answer at the next term of the district court, as required by me; therefore, in the name of the United States, etc., [as in the last form,] to receive the said C D into your custody in the said jail, and him there safely keep until he be discharged by due course of law.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF WARRANT TO KEEP THE PEACE.

TERRITORY OF WASHINGTON, } ss.
——— County, }

To the sheriff or any constable of said county.

Whereas, A B has this day complained in writing under oath, to the undersigned, one of the justices of the peace in and for said county, that he has just cause to fear, and does fear C D, late of the said county, will [here state the threatened injury or violence, as sworn to.] Therefore, in the name of the United States, you are commanded to apprehend the said C D, and bring him forthwith before me, to show cause why he should not give surety to keep the peace and be of good behavior towards all people of this territory, and the said A B especially, and further to be dealt with according to law.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF COMMITMENT UPON SENTENCE.

UNITED STATES OF AMERICA, }
Territory of Washington. }

To any constable, and the keeper of the county jail of said county:

Whereas, at a justice's court held at my office in said county, for the trial of C D, for the offense hereinafter stated, the said C D was convicted of having on the — day of —, 18—, in said county, committed, [here state the offense] and upon conviction the said court did adjudge and determine that the said C D should be imprisoned in the county jail of said county, for — days; therefore, you, the said constable, are commanded in the name of the United States, forthwith to convey and deliver the said C D to the said keeper; and you, the said keeper, are hereby commanded to receive the said C D into your custody in said jail and him there safely keep until the expiration of said — days, or until he shall thence be discharged by due course of law.

Dated this — day of —, 18—. J P, Justice of the Peace.

### FORM OF CERTIFICATE OF CONVICTION.

TERRITORY OF WASHINGTON, } ss.
County of ———, }

At a justice's court, held at my office in said county before me, one of the justices of the peace, in and for said county for the trial of C D, for the offense hereinafter stated, the said C D was convicted of having on the — day of —, 18—, in said county committed, [here insert the offense] and upon conviction, the said court did adjudge and determine that the said C D should pay a fine of — dollars, [or be imprisoned as the case may be,] and the said fine has been paid to me.

Given under my hand this — day of —, 18—.

J P, Justice of the Peace.

### FORM OF AN EXECUTION.

Territory of Washington, }
County of ———, } ss.

To the sheriff or any constable of said county:

Whereas, at a justice's court held at my office in said county for the trial of C D for the offense hereinafter stated, the said C D was convicted of having on the — day of —, 18—, in said county, committed, [here state the offense], and upon conviction the said court did adjudge and determine that the said C D should pay a fine of — dollars, and — dollars costs; and whereas, the said fine and costs have not been paid; these are therefore, in the name of the United States, to command you to levy on the goods and chattels, etc., [as in execution in civil cases.]

## CHAPTER CXXXIII.

### MISCELLANEOUS PROVISIONS—PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

Section
1903. Powers of justice of peace.
1904. Proceedings when complaint made to magistrate
1905. Duty of magistrate at hearing, etc
1906. When warrant for person complained of to issue.
1907. Proceedings, when cause to fear offense threatened will be committed.
1908. When person fails to recognize, must be committed
1909. If complaint frivolous, etc., complainant liable for costs.
1910. Costs, how paid, etc.
1911. Appeals from justice of peace, to district court.
Section
1912. On appeal, witnesses shall be recognized.
1913. Powers of the appellate court
1914. Consequence of appellant failing to prosecute appeal
1915 Person committed for not finding sureties, etc, discharged, when.
1916 Recognizances filed in district court
1917. Person may be recognized to keep the peace without process, etc.
1918 Suit on recognizance, remission of portion of penalty.
1919. Surety may surrender principal. Person surrendered may recognize anew.
1920. words; how construed.

Sec. 1903. Justices of the peace shall have power to cause all laws made for the preservation of the public peace to be kept; and in the execution of that power may require persons to give security to keep the peace, or for their good behavior, or both, in the manner herein provided.

Sec. 1904. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offense against the property or person of another, the magistrate shall examine the complaint, and any witness who may be produced on oath, and reduce such complaints to writing, and the same shall be subscribed by the complainant.

Sec. 1905. It shall be the duty of every magistrate examining a party charged with an offense, or with an intention to commit an offense, to examine all the witnesses he shall deem material, and reduce their testimony to writing, a copy of which, whether the accused is discharged, committed or held to bail, or shall take an appeal, he shall transmit to the clerk of the court having jurisdiction of the offense.

Sec. 1906. If, upon the examination, it shall appear that there is just cause to fear that such offense may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of and bring him before such magistrate or some other magistrate, or court having jurisdiction of the cause.

Sec. 1907. The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall, as soon as may be, hear and examine the complaint. And if it shall appear that there is just cause to fear that any such offense will be committed by the party complained of he shall be required to enter into recognizance with sufficient sureties, in such sum as the magistrate shall direct, towards all the people of the territory, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding one year, but he shall not be ordered to recognize for his appearance at the district court unless he is charged with some offense for which he ought to be held to answer at said court.

Sec. 1908. If the person so ordered to recognize, shall fail to enter into such recognizance, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment with the sum and time for which security was required.

Sec. 1909. If, upon examination, it shall appear that there is not just cause to fear that any such offense will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

Sec. 1910. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give good security for the peace, or for his good behavior, the magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

Sec. 1911. All appeals in criminal complaints from a justice of the peace shall be had and taken to the district court when sitting for the transaction of criminal business.

Sec. 1912. The magistrate, from whom an appeal is so taken, shall require such witnesses as he may think necessary to support the complaint to recognize for their appearance at the court to which the appeal is made.

Sec. 1913. The court before which such appeal is prosecuted, may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable.

Sec. 1914. If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and also shall stand as security for costs which shall be ordered by the court appealed to, to be paid by the appellant.

Sec. 1915. Any person committed for not finding sureties or refusing to recognize as required by the magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

Sec. 1916. Every recognizance taken pursuant to the foregoing provisions, shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

Sec. 1917. Every person who shall in the presence of any magistrate mentioned in the first section of this chapter, or before any judge of a court of record, make an affray or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such judge or magistrate shall contend with hot and angry words to the disturbance of the peace, may be ordered, without process or other proof, to recognize for keeping the peace or being of good behavior for a term not exceeding three months, and in case of refusal may be committed as before directed.

Sec. 1918. Whenever upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

Sec. 1919. Any surety in recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender, shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance, and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and thereupon shall be discharged.

Sec. 1920. Any word used in this act in the singular or plural number shall, whenever it is necessary to give effect and force to the same, according to the true intent thereof, be taken and construed to mean either.

## CHAPTER CXXXIV.

### OF EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL.

Section
1921. Duty of magistrate upon complaint in criminal case.
1922. The sheriff may pursue to any county.
1923. Recognizance for appearance.
1924. Failing to recognize, may be ordered into custody.
1925. If no offense committed, the complainant pay cost
1926. When justices may take cognizance of case.
1927. When bailable offense has been committed; defendant in custody may be recognized.
Section
1928. Justice may associate other magistrates.
1929. Witnesses may be recognized.
1930. When witness may be recognized.
1931. When woman or minor material witness.
1932. Witnesses may be committed, proviso.
1933. Testimony may be reduced to writing.
1934. Recognizances, etc , to be filed with the clerk of district court.
1935. Magistrate may discharge a recognizance.
1936. Default: when may be recorded.
1937. Magistrate to forward an abstract of costs.

Sec. 1921. Upon complaint being made to any justice of the peace, or judge of the district court, in open court, or in vacation, that a criminal offense has been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant, and if it shall appear that any offense has been committed of which the district court has exclusive jurisdiction, the magistrate shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed forthwith to take the person accused and bring him before the person issuing the warrant, unless he shall be absent or unable to attend thereto, then before some other magistrate of the county, to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

Sec. 1922. If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this territory, and for that purpose may command aid, and exercise the same authority as in his own county.

Sec. 1923. The magistrate before whom such accused person shall be brought, when the offense is bailable, may at the request of such person, with or without examination, allow him to enter into recognizance, with sufficient sureties to be approved by the magistrate, conditioned for his appearance at the next term of the court having cognizance of the offense.

Sec. 1924. If the defendant shall not enter into recognizance with sureties, the magistrate shall proceed to hear and examine the complaint, and may adjourn the examination from time to time, not exceeding in all ten days from the time such defendant shall have been brought before him, and in case of such adjournment, the magistrate may, if the offense be bailable, take a recognizance with sufficient sureties for the appearance of the defendant at such further examination; and if he fail to enter into such recognizance, he shall be ordered into custody until the time appointed for such examination.

Sec. 1925. If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he shall be discharged, and if in the opinion of the magistrate, the complaint was malicious, or without probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint.

Sec. 1926. If it should appear that an offense has been committed, of which a justice of the peace has jurisdiction, and one which would be sufficiently punished by a fine not exceeding one hundred dollars, if the magistrate having the complaint is a justice of the peace, he shall cause the complaint to be altered, and proceed as in like cases before a justice of the peace, or any other magistrate; he shall certify the papers with a statement of the offense appearing to be proved, and recognize the witnesses and the defendant to appear before the nearest justice of the peace, at the time appointed, who shall proceed as herein provided.

Sec. 1927. If it appear that a bailable offense has been committed, the magistrate shall order the defendant to enter into recognizance, with sufficient sureties, for his appearance at the next term of the district court, and if he shall not do so, or the offense be not bailable, he shall commit him to jail. The justice of the peace, who committed the party, or the judge of the district court to which the party is held to answer, may admit to bail in the amount required, and approve the sureties.

Sec. 1928. Any magistrate to whom complaint is made, or before whom any defendant is brought, may associate with himself one or more magistrates of the same county, and they may, together, execute the powers and duties before mentioned; but no fees shall be taxed for such associates.

Sec. 1929. Where the person arrested is held to bail, or committed to jail, or forfeits his recognizance, the magistrate shall recognize the witnesses for the prosecution to be and appear at the term of the court to which the party is recognized, bailed or committed.

Sec. 1930. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into recognizance with such sureties as may be deemed necessary for his appearance at court.

Sec. 1931. When any married woman or a minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such married woman or minor in a sum not exceeding fifty dollars which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

Sec. 1932. All witnesses required to recognize with or without sureties, shall, if they refuse, be committed to the county jail by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law: *Provided*, That when the magistrate is satisfied that any witness required to recognize with sureties is unable to comply with such order, he shall immediately take the deposition of such witness and discharge him from custody upon his own recognizance. The testimony of the witness shall be reduced to writing by the justice or some compentent person under his direction, and he shall take only the exact words of the witness; the deposition, except the cross examination, shall be in the narrative form, and upon the cross examination, the questions and answers shall be taken in full. The defendant must be present in person when the deposition is taken, and shall have an opportunity to cross examine witness and he may make any objections to the admission of any part of the testimony and all objections shall be noted by the justice; but he shall not decide as to the admissibility of the evidence, but shall take all the testimony offered by the witness. The deposition must be carefully read to the witness, and any corrections he may desire to make thereto shall be made by adding the same to the deposition as first taken; it must be signed by the witness, certified by the justice and transmitted to the clerk of the district court, in the same manner as depositions in civil actions. And if the witness is not present when required to testify in the case, either before the grand jury or upon the trial in the district court the deposition shall be submitted to the judge of such district court, upon the objections noted by the justice, and such judge shall suppress so much of said deposition as he shall find to be inadmissible, and the remainder of the deposition may be read as evidence in the case, either before the grand jury or upon the trial in the court.

Sec. 1933. The testimony of the witness examined, shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses.

Sec. 1934. All examinations and recognizances taken by any magistrate in pursuance of the provisions of this law, shall be certified and returned by him to the clerk of the district court, on or before the first day of the next term thereof, and if such magistrate shall neglect to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment, as for contempt.

Sec. 1935. When any person shall be committed to prison, or shall be under examination or recognizance to answer any charge for a misdemeanor for which the party injured may have a remedy by civil action, except where the offense was committed upon a sheriff or other officer, justice, or violently, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance, or is conducting the examination, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may, in his discretion, on payment of all costs which may have accrued. discharge the recognizance, or supersede the commitment by an order under his hand, and may also discharge all recognizance and supersede the commitment of all witnesses in the case.

Sec. 1936. When any person under recognizance in any criminal prosecution, either to appear and answer before a justice, or to testify in any court, shall fail to perform the condition of any recognizance, his default shall be recorded; and it shall be the duty of the prosecuting attorney to proceed at once, by action against the person bound by recognizance, or such of them as he may elect.

Sec. 1937. In all cases where any magistrate shall order a defendant to recognize for his appearance before a justice of the peace, or the district court, he shall forward with the papers in the case, an abstract of the costs that have accrued in the case, and such costs shall be subject to the final determination of the case.

## CHAPTER CXXXV.

### CHANGE OF VENUE.

Section
1938. Change of venue.

Sec. 1938. If, previous to the commencement of any trial before a justice of the peace, the defendant, his attorney or agent, shall make and file with the justice an affidavit that the deponent believes that the defendant cannot have an impartial trial before such justice, it shall be the duty of the justice to forthwith transmit all papers and documents belonging to the case, to the next nearest justice of the peace in the same county, who is not of kin to either party, sick, absent from the county, or interested in the result of the action either as counsel or otherwise. The justice to whom such papers and documents are so transmitted, shall proceed as if the suit had been instituted before him. Distance as contemplated by this section, shall mean to be by the nearest traveled route. The costs of such change of venue shall abide the result of the suit.

# MISCELLANEOUS.

## CHAPTER CXXXVI.

### LIENS ON STEAMERS, VESSELS AND BOATS.

Section
1939. For what steamers, vessels and boats, liable.
1940. Maritime contract enforced by admiralty suit *in rem*, and non-maritime contracts enforceable by civil action.

Sec. 1939. All steamers, vessels, and boats, their tackle, apparel, and furniture, are liable:

First, For services rendered on board at the request of, or on contract with their respective owners, masters, agents, or consignees;

Second, For supplies furnished in this territory for their use, at the request of their respective owners, masters, agents, or consignees;

Third, For work done, or material furnished in this territory, for their construction, repair or equipment, at the request of their respective owners, masters, agents, consignees, contractors, sub contractors, or other person or persons, having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, sub-contractor, builder, or person having charge either in whole or in part of the construction, alteration, repair or equipment of any vessel, shall be held to be the agent of the owner, for the purposes of this chapter.

Fourth, For their wharfage, and anchorage within this territory;

Fifth, For non-performance or mal-performance of any contract for the transportation of persons or property between places within this territory, or to or from places within this territory, made by their respective owners, masters, agents, or consignees;

Sixth, For injuries committed by them to persons or property within this territory, or while transporting such persons or property to or from this territory;

Demands for these several causes constitute liens upon all steamers, vessels, and boats, and their tackle, apparel, and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of three years from the time the cause of action accrued.

Sec. 1940. Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, *in rem*, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any district court in this territory.

## CHAPTER CXXXVII.

### LIENS ON LOGS, SPARS, PILES, LUMBER AND TIMBER.

Section
1941. Class of laborers entitled to.
1942. Manufacturing lumber, entitles laborer to.
1943. Party selling timber, lien upon logs cut.
1944. Claims under this chapter preferred; sales subject to liens.
1945. Claim must be filed within eight months.
1946. Claim of party selling timber for eight months preceding.
1947. What claim shall contain; form of notice.
1948. Party selling timber must file claim and notice.

Section
1949. Auditor to record claims, and index same.
1950. Suit must be brought on claim within 12 months.
1951. Enforcement of claims; procedure.
1952. Parties to suits of foreclosure of liens.
1953. Consolidation of suits.
1954. Judgment and decree.
1955. Order of sale of property, disposition of proceeds.
1956. Penalty for defeating identification of property claimed.

Sec. 1941. Every person performing labor upon, or who shall assist in obtaining or securing sawlogs, spars, piles or other timber, has a lien upon the same for the work or labor done upon, or in obtaining or securing the same, whether such work or labor was done at the instance of the owner of the same or his agent. The cook in a logging camp shall be regarded as a person who assists in obtaining or securing the timber herein mentioned.

Sec. 1942. Every person performing labor upon or who shall assist in manufacturing sawlogs into lumber, has a lien upon such lumber, while the same remains at the mill where manufactured whether such work or labor was done at the instance of the owner of such logs or his agent.

SEC. 1943. Any person who shall permit another to go upon his timber-land and cut thereon saw-logs, spars, piles, or other timber, has a lien upon such logs, spars, piles, and timber, for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price.

SEC. 1944. The liens provided for in this chapter are preferred liens and are prior to any other liens, and no sale or transfer of any sawlogs, spars, piles, or other timber or manufactured lumber, shall divest the lien thereon as herein provided.

SEC. 1945. The person rendering the service or doing the work or labor named in sections 1941 and 1942 is only entitled to the liens as provided herein for services, work, or labor, for the period of eight calendar months, or any part thereof, next preceding the filing of the claim as provided in section 1947.

SEC. 1946. The person granting the privilege mentioned in section 1943 of this act is only entitled to the lien as provided therein for saw-logs, spars, piles, and other timber cut during the eight months next preceding the filing of the claim as provided in section 1947.

SEC. 1947. Every person, within thirty days after the close of the rendition of the services, or after the close of the work or labor mentioned in sections 1941 and 1942, of this act, claiming the benefit hereof, must file for record with the county auditor of the county in which such saw-logs, spars, piles and other timber was cut, or in which such lumber was manufactured, a claim containing a statement of his demand, and the amount thereof, after deducting as near as possible all just credits, and off sets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any, and in case there is no express contract, the claim shall state what such service, work or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien, sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person, to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:

——— Claimant, vs. ——— ———

Notice is hereby given that —— of ——county, Washington territory, claims a lien upon a — of saw logs, being about — in quantity, which were cut in — county, Washington territory, are marked thus—— and are now lying in ——, for labor performed upon and assistance rendered in — said saw logs, —. That the name of the owner or reputed owner is —. That — employed said — to perform such labor and render such assistance, upon the following terms and conditions, to-wit: The said — agreed to pay the said — for such labor and assistance ——. That said contract has been faithfully performed and fully complied [with] on the part of said — who performed labor upon and assisted in — said logs for the period of —. That said labor and assistance were so performed and rendered upon said logs between the — day of — and the — day of — and the rendition of said services was closed on the — day of — and thirty days have not elapsed since that time. That the amount of claimant's demand for said services is —; that no part thereof has been paid except — and there is now due and remaining unpaid thereon, after deducting all just credits and off-sets, the sum of —, in which amount he claims a lien upon said logs.

TERRITORY OF WASHINGTON, } ss.
—— County, }

—— being first duly sworn, on oath says that he is —, named in the foregoing claim, has heard the same read, knows the contents thereof and believes the same to be true.

Subscribed and sworn to before me this — day of —. ——.

SEC. 1948. Every person mentioned in section 1943, claiming the benefit hereof, must file for record with the county auditor of the county in which such saw-logs, spars, piles, and other timber was cut, a claim, in substance the same as provided in section 1947, and verified as therein provided.

SEC. 1949. The county auditor must record any claim filed under this chapter in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds, or other instruments.

SEC. 1950. No lien provided for in this chapter binds any sawlogs, spars, piles or other timber or any lumber for a longer period than twelve calendar months, after the claim as herein provided has been filed, unless a civil action be commenced in a proper court, within that time, to enforce the same.

SEC. 1951. The liens provided for in this chapter shall be enforced by a civil action in any of the district courts of this territory, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that may be against it.

SEC. 1952. Any person who shall bring a civil action to enforce the lien herein provided for or any person having a lien as herein provided for, who shall be made a party to any such civil action, has the right to demand that such lien be enforced against the whole or any part of the saw-logs, spars, piles or other timber, or manufactured lumber upon which he has performed labor, or which he has assisted in obtaining or securing, or which has been cut on his timber land during the eight months mentioned in sections 1945 and 1946, for all his labor upon or for all his assistance in obtaining or securing said logs, spars, piles or other timber or in manufacturing said lumber during the whole or any part of the eight months mentioned in section 1945, or for timber cut during the whole or any part of the eight months mentioned in section 1946.

SEC. 1953. Any number of persons claiming liens under this chapter may join in the same action, and when separate actions are commenced the court may consolidate them. The court may also allow as part of the costs the moneys paid for filing and recording the claim and a reasonable attorney's fee for each person claiming a lien.

SEC. 1954. In such civil action, judgment must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided for to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale to the payment of each judgment *pro rata*, according to the amount of such judgment.

Sec. 1955. The court or judge may order any property subject to a lien as in this chapter provided, to be sold by the sheriff as personal property is sold on execution, either before or at the time judgment is rendered as provided in section next preceding and the proceeds of such sale must be paid into court to be applied as in said section directed.

Sec. 1956. Any person who shall injure, impair, or destroy, or who shall render difficult, uncertain, or impossible of identification, any saw-logs, spars, piles, or other timber upon which there is a lien as herein provided without the express consent of the person entitled to such lien, shall be liable to the lien holder for the damages to the amount secured by his lien which may be recovered by a civil action against such person.

## CHAPTER CXXXVIII.

### LIENS OF MECHANICS AND OTHERS UPON REAL PROPERTY.

Section
1957. Who may have lien, for what.
1958. Improvement, grading. etc , of street or lot.
1959. What property shall be subjected to
1960. Preferred to all subsequently-attaching incumbrances.
1961. Requisites of claim.
1962. Where claim is against two buildings.
1963. Auditor to keep record of claims.
1964. Suit on claim must be brought within eight months.

Section.
1965. Disclaimer of responsibility by owner for improvements by tenant.
1966. Claim of contractor determined.
1967. Priority of liens regulated.
1968. Consolidation of suits for foreclosure.
1969. When materials furnished, shall not be attached.
1970, Person may enforce claim by action for debt.
1971. Proceedings similar to foreclosure of mortgage.

Sec. 1957. Every person performing labor upon or furnishing materials to be used in the construction, alteration or repair, of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who performs labor in any mine or mining claim, has a lien upon the same for the work or labor done or materials furnished by each respectively whether done or furnished at the instance of the owner of the building or other improvement, or his agent; and every contractor, sub-contractor, architect, builder or person having charge of any mining or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner for the purposes of this chapter.

Sec. 1958. Any person who, at the request of the owner of any lot in any incorporated city or town, grades, fills in, or otherwise improves the same or the street in front of or adjoining the same, has a lien upon such lot for his work done and materials furnished.

Sec. 1959. The land upon which any building, improvement or structure is constructed, together with a convenient space about the same or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if, at the commencement of the work or of the furnishing of the materials for the same, the land belonged to the person who caused said building, improvement or structure to be constructed, altered or repaired; but if such person owned less than a fee simple estate in such land then only his interest therein is subject to such lien.

Sec. 1960. The liens provided for in this chapter are preferred to any lien, mortgage or other incumbrance which may have attached subsequent to the time when the building, improvement or structure was commenced, work done or materials were commenced to be furnished; also to any lien, mortgage, or other encumbrance, of which the lien holder had no notice, and was unrecorded at the time the building, improvement or structure was commenced, work done or the materials were commenced to be furnished.

Sec. 1961. Every person, claiming the benefit of this chapter, must, within sixty days after the completion of any building, improvement or structure, or after the completion of the alteration or repair thereof, or after he has ceased to labor thereon from any cause, or after he has ceased to furnish materials therefor, or after the performance of any labor in a mine or mining claim, file for record with the county auditor of the county, in which such property or some part thereof is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner, or reputed owner, if known, and also the name of the person by whom he was employed, or to whom he furnished the materials, with a statement of the terms and conditions of his contract, if any, and, also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of the claimant, or some other person, to the effect that the affiant believes the claim to be just.

Sec. 1962. In every case in which one claim is filed against two or more buildings, mines, mining claims, or other improvements owned by the same person, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mines, mining claims, or other improvements, otherwise the lien of such claim is postposed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens by judgment, mortgage or otherwise upon either of such buildings or other improvements, or upon the land upon which the same are situated.

(Sec. 1963. The county auditor must record the claims mentioned in this chapter, in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed and for which he may receive the same fees as are allowed by law for recording deeds or other instruments.)

Sec. 1964. No lien provided for in this chapter binds any building, mining claim, improvement, or structure for a longer period than eight calendar months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien; or if a credit be given, then eight calendar months after the expiration of such credit; but no lien shall continue in force under this chapter for a longer time than two years from the time the work is completed by agreement or credit given.

Sec. 1965. Should the owner or owners of any land desire to prevent the lien from attaching as herein provided for in cases where he or they have not themselves contracted for the construction, alteration or repair of the works mentioned in section 1957, he or they may do so by giving a notice in writing posted in some conspicuous place upon said land or improvement to the effect that he or they will not be responsible for said improvement; said notice to be posted within ten days after said owner or owners come to a knowledge of the making of said improvements.

Sec. 1966. The contractor shall be entitled to recover upon the claim filed by him only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished as aforesaid; and in all cases where a claim shall be filed under this chapter for work done or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action the owner may withhold from the contractor the amount of money for which the claim is filed; and in case of judgment against the owner or his property, upon the lien, the said owner shall be entitled to deduct from any amount due or to become due by him to the contractor, the amount of such judgment and costs, and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor any amount so paid by him, the said owner, in excess of the contract price, and for which the contractor was originally the party liable.

Sec. 1967. In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien or class of liens which shall be in the following order: (1) All persons other than the original contractors and sub-contractors; (2) The sub-contractor; (3) The original contractors. And the proceeds of the sale of the property must be applied to each lien or class of liens, in the order of its rank; and whenever on the sale of the property subject to the lien there is a deficiency of proceeds, judgment may be rendered for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages.

Sec. 1968. Any number of persons claiming liens may join in the same action, and when separate actions are commenced the court may consolidate them. The court may also allow as part of the costs the moneys paid for filing and recording the claim, and reasonable attorney's fee in the district and supreme court.

Sec. 1969. Whenever materials shall have been furnished for use in the construction, alteration or repair of any building or other improvement, such materials shall not be subject to attachment, execution or other legal process to enforce any debt due by the purchaser of such materials, except a debt due for the purchase money thereof, so long as in good faith the same are about to be applied to the construction, alteration or repair, of such building, mining claim or other improvement.

Sec. 1970. Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due, for work done or materials furnished, to maintain a personal action to recover such debt against the person liable therefor.

Sec. 1971. The liens provided for in this chapter may be enforced in a civil action in the same manner, and under the same proceedings as govern in the foreclosure of a mortgage on real estate.

## CHAPTER CXXXIX.

### LIENS FOR SALARIES AND WAGES.

Section
1972. Assignments of property shall be subject to certain claims of employes; to what extent.

Section
1973. Claim for, against estate of deceased employer.

SECTION
1974. In attachments. etc., certain wages must be paid.
1975. For farm labor, upon crop.
1976. When interest of lessor of farm exempt from such claim.
1977. Claim for farm labor; when to be filed.
1978. Certain provisions extended to farm laborers.

SEC. 1972. In all assignments of property made by any person to trustees or assignees on account of the inability of the person at the time of the assignment to pay his debts, or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks or laborers employed by such persons to the amount of one hundred dollars, each, and for services rendered within sixty days previously, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of the assignor.

SEC. 1973. In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant and laborer for services rendered within sixty days next preceding the death of the employer, not exceeding one hundred dollars, rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate and the allowance to the widow and infant children, and must be paid before other claims against the estate of the deceased person.

SEC. 1974. In cases of executions, attachments and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, salesmen, servants, clerks and laborers who have claims against the defendant for labor done, may give notice of their claims and the amount thereof, sworn to by the person making the claim to the creditor and the officer executing either of such writs at any time before the actual sale of property levied on, and unless such claim is disputed by the debtor or a creditor, such officer must pay to such person out of the proceeds of the sale, the amount each is entitled to receive for services rendered within sixty days next preceding the levy of the writ, not exceeding one hundred dollars. If any or all the claims so presented and claiming preference under this chapter, are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten days from the recovery thereof, and must prosecute his action with due diligence, or be forever barred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim, until the determination of such action; and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim with the same rank as the original claim.

SEC. 1975. Any person who shall do labor upon any farm or land, in tilling the same or in sowing or harvesting, or laboring upon, or securing or assisting in securing, or housing any crop or crops sown or raised thereon during the year in which said work or labor was done, such person has a lien upon all such crop or crops as shall have been raised upon all or any of said land, for said work and labor.

SEC. 1976. The liens provided for in Sec. 1975 are preferred liens, and are prior to any other lien or incumbrance upon said crop or crops, except that the interest of any lessees in any portion of the crops raised, where the premises are leased in consideration of a share of the crop raised, shall not be subject to such lien.

Sec. 1977. Any person claiming the benefit of this chapter must, within thirty days after the close of said work and labor, file for record with the county auditor of the county in which said work and labor was performed, a claim which shall be in substance in accordance with the provisions of section 1947, so far as the same may be applicable, which claim shall be verified as in said section provided.

### SAVING PROVISIONS—CONSTRUCTIONS OF TERMS.

Sec. 1978. All rights secured to the holders of liens upon logs, under the provisions of chapter 137, shall inure to the benefit of those holding liens under the provisions of this chapter, and the said lien holders hereunder, shall have the same right to have their liens recorded, the same right of foreclosure, of joinder of parties, of judgment over against the person primarily liable, and against any person who shall injure or impair their lien or any of their rights, as are above secured to the holders of liens upon logs, under said chapter one hundred and thirty-seven.

Sec. 1979. In construing the provisions of the lien law words used in the masculine gender include the feminine and neuter, the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person, and the word writing includes printing.

(Sec. 1980. All acts relating to any kind or class of liens provided for in this act are hereby repealed, but no action or proceeding commenced before this act takes effect and no right accrued is affected by such repeal but the proceedings therein must conform to the requirements of this act as far as applicable.)

(Sec. 1981. This act establishes the law of this territory respecting the subject to which it relates, and its provisions and all proceedings under it, are to be liberally construed with a view to effect its object.)

## CHAPTER CXL.

### LIEN ON PROPERTY STORED SUBJECT TO ADVANCE CHARGES, ETC.

Section
1980. Property may be sold to satisfy lien for advances, freight, transportation, wharfage and storage.
1981. Of live stock, may be sold on ten days' notice.
1982. Other property sold on thirty days' notice.
Section
1983. Disposition of the proceeds of sale.
1984. If contract exists, this chapter does not govern.
1985. Notices same as in sales of property on execution.

Sec. 1980. Whenever property upon which charges for advances, freight, transportation, wharfage, or storage, due and unpaid, and a lien shall remain and be held in store by the person, or persons in whose favor such lien exists uncalled for, it shall be lawful for such person or persons to cause such property to be sold as is herein provided.

Sec. 1981. If said property consists of live stock, the maintenance of which at the place where kept is wasteful and expensive in proportion to the value of the animals, or other of the perishable property liable, if kept, to destruction, waste or great depreciation, the person or persons having such lien may sell the same upon giving ten days' notice.

Sec. 1982. All other property upon which such charges may be unpaid, due, and a lien after the same shall have remained in store uncalled for, for a period of thirty days after such charges shall have become due, may be sold by the person or persons having a lien for the payment of such charges upon giving ten days' notice: *Provided*, That where the property can be conveniently divided into separate lots or parcels, no more lots or parcels shall be sold than shall be sufficient to pay the charges due on the day of sale, and the expenses of the sale.

Sec. 1983. The moneys arising from sales made under the provisions of this chapter shall first be applied to the payment of the costs and expenses of the sale, and then to the payment of the lawful charges of the person or persons having a lien thereon for advances, freight, transportation, wharfage or storage, for whose benefit the sale shall been made; the surplus, if any, shall be retained subject to the future lawful charge of the person or persons for whose benefit the sale was made, upon the property of the same owner still remaining in store uncalled for, if any there be, and to the demand of the owner of the property, who shall have paid such charges or otherwise satisfied such lien, and all moneys remaining uncalled for, for the period of three months, shall be paid to the county treasurer, and shall remain in his hands a special fund for the benefit of the lawful claimant thereof.

Sec. 1984. Nothing in this chapter contained shall be so construed as to alter or affect the terms of any special contract in writing, made by the parties as to the advances, affreightment, wharfage or storage; but when any such special contract shall have been made, its terms shall govern irrespective of this chapter.

Sec. 1985. All notices required under this chapter shall be given as is or may be by law provided in cases of sales of personal property upon execution.

## CHAPTER CXLI.

### MORTGAGES ON PERSONAL PROPERTY.

Section
1986. All personal property may be mortgaged.
1987. Void unless accompanied by affidavit, etc.
1988 How and where must be recorded.
1989. When mortgagee may take possession of property.
1990. Property mortgaged may be sold under process.
1991. How may be foreclosed.
1992. Notice, upon foreclosure; what to contain.

Section
1993. How notice must be served.
1994. Notice must be published.
1995. Interest acquired by purchaser.
1996. Officer conducting sale, must execute bill of sale.
1997. How, and by whom, the right to foreclose may be contested.
1998. Mortgagee may sue before debt is due; when.
1999. Penalty for removing mortgaged property.

Sec. 1986. Mortgages may be made upon all kinds of personal property, and upon the rolling stock of a railroad company, and upon all kinds of machinery, and upon boats and vessels, and on growing crops, and on portable mills and such like property.

Sec. 1987. A mortgage of personal property is void as against creditors of the mortgagor or subsequent purchaser, and incumbrances of the property for value and in good faith, unless it is accompanied by the affidavit of the mortgagor that it is made in good faith, and without any design to hinder, delay, or defraud creditors, and it is acknowledged and recorded in the same manner as is required by law in conveyance of real property.

Sec. 1988. A mortgage of personal property must be recorded in the office of the county auditor of the county in which the mortgaged property it situated, in a book kept exclusively for that purpose. When personal property mortgaged is thereafter removed from the county in which it is situated, it is, as except between the parties to the mortgage, exempted from the operation thereof unless either:

First. The mortgagee within thirty days after such removal causes the mortgage to be recorded in the county to which the property has been removed: or

Second. The mortgage be recorded in the custom house; or

Third. The mortgagee within thirty days after such removal takes possession of the property: *Provided*, That a mortgage on any vessel or boat, or part of a vessel or boat, over twenty tons burden, shall be recorded in the office of the collector of customs, where such vessel is registered, enrolled or licensed and need not be recorded elsewhere.

SEC. 1989. A mortgage of personal property, where a debt for the the security of which the mortgagee has been given, has become due, or if the debt is not yet due, and the mortgagee has reasonable ground to believe that his debt is insecure, and that by allowing the property longer to remain in the hands of the mortgagor, he would be in danger of losing his debt or security, may have the property taken from the possession of the mortgagor, and sold in the manner provided in this chapter.

SEC. 1990. The interest of the mortgagor, subject, however, to the lien of the mortgagee, may be sold under any process of law, issuing out of any district court or justice of the peace court, in this territory: *Proided, however*, That if the party, who has said mortgage, reside in this territory, or has an agent herein, and the same is known to the officer executing such process, he shall serve upon him or his agent personally, or by mailing to him, or to his agent, if their postoffice is known, a notification of the intended sale, at the time such mortgaged property is seized under said process, or within five days thereafter. Said property shall not be sold within less than thirty days after its seizure and the officer, executing such process, must post in three public places, near the place where the said property is to be sold, a notice of the time and place of such sale, at the time he seizes said property under said process.

SEC. 1991. Any mortgage of personal property, when the debt to secure which the mortgage was given is due, may be foreclosed by notice and sale as herein provided; or it may be foreclosed by action in the district court having jurisdiction in the county in which the property is situated.

SEC. 1992. The notice must contain a full description of the property mortgaged, together with time and place of sale, also a statement of the amount due, and must be signed by the mortgagee or his attorney.

SEC. 1993. Such notice shall be placed in the hands of the sheriff or other proper officer, and shall be personally served, in the same manner as is provided by law for the service of a summons: *Provided*, That if the mortgagor cannot be found in the county where the mortgage is being foreclosed, it shall be necessary to advertise the notice or affidavit in a newspaper, but the general publication directed in the next section shall be sufficient service upon all the parties interested, and such notice shall be sufficient authority for the officer to take such property into his immediate possession.

SEC. 1994. After notice has been served upon the mortgagor, it must be published in the same manner, and for the same length of time as required in cases of the sale of like property on execution, and the sale shall be conducted in the same manner.

SEC. 1995. The purchaser shall take all interest which the mortgagor had in the said mortgaged property upon which the said mortgage operated.

SEC. 1996. The officer conducting the sale shall execute to the purchaser a bill of sale of the property, which bill of sale shall be effectual to carry the whole title and interest purchased, and if any balance of the purchase price remain it shall be disposed of in the same manner as surplus proceeds of sales are on execution.

SEC. 1997. The right of the mortgagee to foreclose, as well as the amount claimed to be due, may be contested by any person interested in so doing, and the proceedings may be transferred to the district court, for which purpose an injunction may issue if necessary.

SEC. 1998. Where the debt is not due for which the mortgage is given, and the mortgagee has reasonable cause to believe that the mortgaged property will be destroyed, lost or removed, he shall have the right to an immediate action in the district court of the county having jurisdiction where the property is situated, for the recovery of his debt, and the court may make any order it may deem fit, in order to secure said property so as to make the same available for the satisfaction of said debt.

SEC. 1999. Any person having mortgaged personal property, who shall remove the same from the county where it was situated at the date of the mortgage, before it is duly released, or without the consent in writing of the mortgagee, or who shall sell or dispose of the same, or any interest therein, where he parts with the possession thereof, or who shall secrete the same, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by imprisonment in the county jail for a term not exceeding three years.

## CHAPTER CXLIX.

### SUITS FOR DIVORCE AND ALIMONY.

SECTION
2000. Causes for divorce.
2001 Decree of nullity of marriage may be obtained.
2002. Who may file complaint.
2002 What proceedings to be had.
2003. When court to require proof
2004. Cross complaint may be filed.
2005. When both parties considered as applying
2006. Disposition of property, pending petition.
2070 Disposition of property and provision for minor children.

SECTION
2008. Divorce dissolves the marriage, proviso.
2009 Court may change name of female.
2010. Prosecuting attorney to resist petition; when, and shall not bring suit.
2011. Divorces shall be for causes distinctly stated, proved, etc.
2012. Either party may appeal from decree.
2012. Civil practice, except as to jury trial, to govern proceedings.
2013. Causes may be removed to supreme court.

SEC. 2000. Divorces may be granted by the district court on application of the party injured, for the following causes:

1. When the consent to the marriage of the party applying for the divorce was obtained by force or fraud, and there has been no subsequent voluntary co-habitation;

2. For adultery on the part of the wife, or of the husband, when unforgiven, and application is made within one year after it shall come to his or her knowledge;

3. Impotency;

4. Abandonment for one year;

5. Cruel treatment of either party by the other, or personal iniquities rendering life burdensome.

6. Habitual drunkenness of either party, or the neglect or refusal of the husband to make suitable provisions for his family;

7. The imprisonment of either party in the penitentiary, if complaint is filed during the term of such imprisonment; any divorce may be granted upon application of either party, for any other cause deemed by

the court sufficient, and the court shall be satisfied that the parties can no longer live together.

Sec. 2001. When there is any doubt as to the facts rendering a marriage void, either party may apply for, and on proof obtained, a decree of nullity of marriage.

Sec. 2002. Any person who has been a resident of the territory for one year may file his or her complaint for a divorce or decree of nullity of marriage under oath in the district court of the county where he or she may reside, and like proceedings shall be had thereon as in civil cases.

Sec. 2003. When the defendant does not answer, or answering, admits the allegations in the complaint, the court shall require proof before granting a divorce or a decree of nullity.

Sec. 2004. The defendant may, in addition to his or her answer, file cross complaint for divorce, and the court may in such case grant a divorce, if any, in favor of either party or as an application of both.

Sec. 2005. Both parties shall be considered as applying for a divorce, when the complaints of both are filed at the same term of the district court, and when the defendant by his or her cross complaint, also applies for a divorce.

Sec. 2006. Pending the action for divorce, the court or judge thereof, in vacation, may make, and by attachment, enforce such orders for the disposition of the persons, property and children of the parties as may be deemed right and proper, and such orders relative to the expenses of such suit as will insure to the wife an efficient preparation of her case, and a fair and impartial trial thereof; and on decreeing or refusing to decree a divorce, the court may, in its discretion, require the husband to pay all reasonable expenses of the wife in the prosecution or defense of the petition, when such divorce has been so granted or refused, and give judgment therefor.

Sec. 2007. In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the benefit [property] was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody, and support and education of the minor children of such marriage.

Sec. 2008. Whenever judgment of divorce from the bonds of matrimony is granted by the court, in this territory, the court shall order a full and complete dissolution of the marriage as to both parties: *Provided*, That neither party shall be capable of contracting marriage with a third person, until the period in which an appeal may be taken under the provisions of the civil practice act, has expired; and in case an appeal is taken then neither party shall intermarry, with a third person, until the cause has been fully determined.

Sec. 2009. In all suits for a divorce, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court shall in its order or decree appoint.

Sec. 2010. Whenever a petition for divorce remains undefended, it shall be the duty of the prosecuting attorney to resist such petition; but no prosecuting attorney shall be employed in, or allowed to conduct any suit for a divorce on the part of the petitioner or applicant in the courts of this territory; nor shall any prosecuting attorney be allowed to resist a petition for divorce in those cases where the defendant does not appear, or appearing admits allegations of the complaint, if the attorney for the petitioner is a partner in the practice of law, or keeps his office with such prosecuting attorney, but in all such cases the court or judge before whom the case is to be heard shall appoint an attorney to resist the petition, who shall be entitled to the compensation allowed by law to prosecuting attorneys in such cases.

Sec. 2011. In all instances where a district court shall grant a divorce, it shall be for cause distinctly stated in the complaint, and proved and found by the court, and the court shall state the facts found. upon which the decree is rendered; and when either party shall signify a desire to appeal from any of the orders of the court, in the disposition of the property, or of the children, the court shall certify the evidence adduced on the trial, and the supreme court shall be possessed of the whole case as fully as the district court was, and may reverse, modify, or affirm said judgment according to the real merits of the case.

Sec. 2012. The practice in civil actions shall govern all proceedings in the trial of divorces, except the trial by jury is dispensed with, and as may be otherwise modified by this act.

Sec. 2013. Writs of error shall be the proper mode of removing causes mentioned in this act from the district to the supreme court, but errors of facts as well as errors of law may be corrected.

## CHAPTER CXLIII.

### INSOLVENT DEBTORS.

Section
2014 Mode of discharge of
2015 Petition, what shall be stated.
2016. Schedule to be annexed to petition.
2017. Schedule signed and verified.
2018. Notice to issue to creditors.
2019. Surrender of property.
2020. To deliver up books notes, vouchers, to clerk.
2021. Notice to creditors to show cause.
2022. Till hearing, all proceedings stayed.
2022. When and how receiver may be appointed.
2023. Assignees, how elected.
2024. Assignee to file deliberation of creditors.
2025. Of the qualification, bond, etc., of assignees.
2026. Petition by assignees for sale of property.
2027. Funds received by assignees. how distributed.
2028. Of the declarations of dividends.
2029. Creditors may require assignees to present accounts.
2030. Discharge of assignees for failing to account.
2031. On refusal of creditors to appoint assignees, sheriff may recover property of insolvent.
2032. Compensation of assignees.
2033. Assignment opposed on ground of fraud, and trial of accusation.
2034. Hearing of allegation of fraud.
2035. Right of creditor alleging fraud.
2036. Judgment of fraud, deprived of benefit of insolvent laws.
Section
2037. When shall be discharged from debts, etc.
2038. When judge may summarily approve appointment of assignees.
2039. Who shall be deemed fraudulent bankrupts.
2040. Passing sham deeds, fraudulent.
2041. Party failing preferring creditors debarred benefit of this chapter.
2042. Parties debarred from benefits of this chapter.
2043. Sales of property after petition filed shall debar insolvent.
2044. When party who has received the benefit shall forfeit same.
2045. No party can apply for benefit by attorney.
2046. After surrender of property legal title vests in assignees.
2047. When creditors to be represented by attorney appointed by court; fees of.
2048. When debtor has no property. proceedings by court.
2049. Assignees to receive forthwith effects of debtor.
2050. Of accounts for disbursements by assignees.
2051. Of assignments by partnerships.
2052. Other assignments than herein provided, declared illegal.

Sec. 2014. Every insolvent debtor may be discharged from his debts, as hereinafter provided, upon executing an assignment of all his property, real, personal or mixed, for the benefit of all his creditors, and upon compliance with the several provisions of this chapter: *Provided*, Said assignment be made bona fide and without fraud. The district court only, shall have original jurisdiction in the subject matter herein contained.

Sec. 2015. Such insolvent debtor shall petition the judge having original jurisdiction within the place of his domicil or usual residence, which petition shall briefly state the circumstances which compel him to surrender his property to his creditors, and shall conclude with a prayer to make a cession of his estate, and to be discharged from his debts, in pursuance of the provisions of this chapter.

Sec. 2016. The debtor shall annex to said petition his schedule, that is to say, a summary statement of his affairs, with a list of losses he may have sustained, giving the names of his creditors, if known; the amount due to each creditor, and the cause and nature of such indebtedness and when it accrued, and a statement of any existing judgment, mortgage, collateral or other securities for the payment of any such debt. Said schedule shall also contain a full, complete and perfect inventory of all his property, real, personal and mixed; of all choses in action, debts due or to become due, and all moneys on hand of such insolvent; said schedule shall also contain a full statement of all incumbrances existing upon the property of the insolvent. The said debtor shall, as nearly as possible, estimate the property by him surrendered, and set it forth in the schedule at its true cash value.

Sec. 2017. The said schedule shall be signed by the debtor, and be by him sworn to before the judge having jurisdiction of the failure, or other officer, authorized to administer oaths, in the following words, to-wit:

"I, (A B) do, in the presence of Almighty God, truly and solemnly swear, that the schedule now delivered by me, doth contain a full, perfect and true discovery of all the estate, real, personal and mixed, goods and effects to me in any way belonging, all such debts as are to me owing, or to any person or persons in trust for me, and all securities and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me or to my use, or to any other person or persons in trust for me; that I have no lands, money, stock or estate, reversion or expectency besides that set forth in my schedule; that I have in no instance created or acknowledged a debt for a greater sum than I honestly and truly owed; that I have not directly or indirectly sold, or otherwise disposed of in trust, or concealed any part of my property, effects or contracts; that I have not in any way compounded with my creditors, whereby to secure the same, or to receive, or to expect any profit or advantage therefrom, or to defraud or deceive any creditor to whom I am indebted in any manner whatever, so help me God."

Sec. 2018. The judge receiving such petition, schedule and affidavit, shall make an order requiring all the creditors of such insolvent to show cause, if any they can, why an assignment of the insolvent estate should not be made, and he be discharged from his debts. Said schedule being signed and sworn to by the petitioner, the judge shall certify the same and cause it to be filed in the office of the clerk of the court in the county where the assignment was made, there to remain for the information of the creditors.

Sec. 2019. The insolvent debtor, on a surrender of his property, shall include and set forth in his schedule his whole estate, including his homestead, if any he has, and all such property as may be by law exempt on execution from seizure and forced sale, and it shall be the duty of the judge having jurisdiction of the failure, to exempt and set apart for the use and benefit of said insolvent, such real and personal property as he is by law authorized to retain to his own use or that of his family.

Sec. 2020. The insolvent shall, either before or on the day appointed for the meeting of the creditors, deliver to the court all the commercial or other books he may have kept, which books shall be deposited in the clerk's office of said court. Said insolvent shall also deliver to the court at the same time, all vouchers, notes, bonds, bills, securities or other evidence of debt in any manner relating to or having any bearing upon or connection with the property surrendered by said debtor, and all such papers or securities shall be deposited in the clerk's office of said court, and the clerk shall hand them over, together with the books of the insolvent, to the assignees who may be appointed.

Sec. 2021. The judge granting the order for the meeting of the creditors, shall direct the clerk of the court to issue a notice calling the creditors of the insolvent to be and appear within thirty days from the date of publication of such notice, before such judge at chambers or in open court, to show cause why the prayer of said insolvent should not be granted. Said notice shall be published at least thirty days in a newspaper printed in the county in which application is made, if there be one, and if there be none, then a newspaper printed nearest to such county.

Sec. 2022. When issuing the order for the meeting of the creditors, the judge shall order that all proceedings against the debtor be stayed: *Provided, however*, That the said stay of proceedings shall not prevent the judge, who shall have granted it, from appointing a receiver to take possession of all property of the debtor for the benefit of all his creditors, if one or more of his creditors or his attorney shall apply for such appointment, and swear that he has reason to believe, and does believe, that the debtor may avail himself of the stay of proceedings and keep his property from his creditors, if no cause sufficient, in the judgment of the court, shall have been shown why the debtor should not have the benefit of this chapter and shall produce satisfactory proof of the facts on which the affidavit is founded.

Sec. 2023. At a meeting of creditors, the said creditors after having certified on oath that their respective claims are legitimate and true, shall proceed to the appointment of one or more assignees, not exceeding three. In appointing assignees, the opinion of the majority of said creditors in sums or in claims shall prevail. At such meeting any creditor may be represented by his duly authorized agent or attorney.

Sec. 2034. When the assignee or assignees shall have been duly appointed in the meeting of creditors, and the surrender of the property shall have been duly accepted of, it shall be the duty of the said assignees to deposit in the clerk's office of the court who shall have issued the order for a call of the creditors, a certified statement of the deliberations of said creditors on the appointment of the said assignees.

Sec. 2025. The judge shall require from the assignees a bond, with one or more good and sufficient sureties, on which bond the parties therein shall be liable, jointly and severally, for the amount thereof, conditional for the faithful performance of the duties devolving upon said assignees. The amount of said bond shall be determined by the majority of creditors, and should not the creditors so determine, the amount of said bond shall be fixed by the judge having jurisdiction of the failure.

Sec. 2026. The assignees shall apply by petition to the court or judge who shall have ordered a meeting of creditors, to be authorized to sell at public auction, and to the best and highest bidder for cash, all the insolvent debtor's property, of whatever nature or kind, and said assignees shall give at least twenty days' public notice, in the same manner as a notice for a meeting of creditors, of all sales of the property of said insolvent, giving at the same time a full description of the property to be disposed of: *Provided, however,* That if any of the property surrendered be of a perishable nature, the assignees shall be authorized to sell the same on giving at least five days' notice of such sale by publication, or notice of such sale as in sale on execution.

Sec. 2027. Assignees shall deposit all funds belonging to the failure in their joint names, so that nothing can be drawn without the consent of all. Said funds shall remain inviolable, and shall never be loaned, used or mixed with the personal affairs of the assignees; and finally the said assignees shall make a distribution of the proceeds of the property of the insolvent agreeably to the direction of the court or judge. Said assignees may sue and be sued, either as plaintiffs or defendants, in everything which respects the rights and actions which may belong to the insolvent or which may concern the mass of creditors. All suits brought against the insolvent anterior to his surrender of property, before the courts of other counties, shall be transferred to the court having jurisdiction in the county in which said insolvent shall have presented his schedule and may be continued on motion and notice against his assignees.

Sec. 2028. Whenever a dividend shall be declared, the assignees shall make out a statement containing the names of the several creditors, mentioning the sums which are due them respectively, and the said statements shall, besides, contain pro rata sums to be divided among all the creditors. Said assignees shall deposit said statement in the clerk's office of the court, who shall order that notice be given to the creditors in the same manner as for the meeting, that they show cause before the judge within fifteen days next following the publication, why the statement should not be accepted and the distribution made agreebly to its contents.

Sec. 2029. One or more creditors may at any time make a motion to know if the assignees have funds in their hands, and the assignees shall be required to present their accounts, and if they have funds they shall distribute them without delay.

Sec. 2030. Should the assignees refuse or neglect to render their accounts as required by the preceding section, or to pay over a dividend when they shall have, in the opinion of the court or judge, sufficient funds for that purpose in their hands, the court or judge shall immediately discharge such assignees from their trust, and shall have power to appoint others in their place. The assignees so discharged shall deliver over to those appointed by the court or judge all the funds, property, books, vouchers and securities belonging to the insolvent, without charging any commission or expenses thereon, and shall also be condemned to pay the new assignee, for the benefit of the mass of the creditors, twenty per cent. in addition to the amount of funds in their hands.

Sec. 2031. If on the day appointed for the meeting, the creditors, although duly summoned, do not attend, or refuse to appoint one or more assignees, it shall be lawful for the judge before whom the said meeting may take place, to authorize the sheriff of the county to receive the surrender of the property offered by the debtor, and to perform in every respect the functions of assignee, and for the faithful performance of said trust, he shall be responsible on his official bond: *Provided*, That if any of the creditors should choose to take that charge, the judge shall appoint said creditor for that purpose, upon said creditor giving a bond with good and sufficient security proportioned to the value of the property committed to his charge.

Sec. 2032. The assignees, collectively, shall be entitled to charge and receive for their services, to-wit: Ten per centum upon a sum not exceeding ten thousand dollars; eight per centum upon sums above ten thousand dollars, and not exceeding thirty thousand dollars; six per centum upon sums above thirty thousand dollars, and not exceeding sixty thousand dollars, and four per centum on all sums exceeding sixty thousand dollars: *Provided*, That the said commissions shall be allowed only on such net sums of money as shall actually come into their hands, or be distributed by them. The mass of creditors shall in no manner be liable for the fees of counsel of the insolvent debtor in conducting a surrender of the property.

Sec. 2033. That in case after the appointment of said assignees any one of the creditors of the insolvent debtor should deem necessary to oppose it on the ground of some fraud having been committed by the said insolvent debtor, or of the appointment not having been legally made, he shall within ten days next following the appointment of said assignees, lay before the court or judge which has already taken cognizance of the case, his written opposition, stating especially the several facts of nullity of the said appointment, or of fraud by him alleged against the insolvent debtor; whereupon in case of accusation of fraud, after having received said insolvent debtor's answer, the court or judge shall order a jury to be summoned of not less than six men, to be summoned in the same manner as jurors are summoned in the district court, for the purpose of deciding on the said accusation.

Sec. 2034. On the day, or any time appointed in such order, or any subsequent day or term, the court or judge shall proceed to hear the proofs and allegations of the parties; and before any other proceedings be had, shall require proof of the publication of the notice as herein provided.

Sec. 2035. Upon such an accusation of fraud, the creditor who shall have brought the same, shall have the right to interrogate the insolvent debtor on oath, and put to him such written questions as to the state of his affairs and the several transactions in which he may have been engaged anterior to his failure, as he shall think proper; and the insolvent shall answer in writing the said interrogatories in a pertinent and distinct manner, and every equivocal answer on his part shall be construed against him.

Sec. 2036. If the jury summoned for the purpose of deciding on the accusation of fraud against such insolvent debtor, declare in their verdict that said insolvent has been guilty of fraud, the said debtor shall forever be deprived of the benefit of the laws passed for the relief of insolvent debtors in this territory.

Sec. 2037. If the accusation of fraud brought against the debtor is declared to be unfounded, or if there be no opposition to the surrender of his property, and provided said surrender has been made according to the provisions of this chapter, said debtor shall be released and fully discharged from any and all debts then existing and included in said schedule.

Sec. 2038. If the judge before whom the accusation of fraud is brought, or an opposition to the appointment of assignees is made, thinks that the interest of the mass of creditors of the insolvent may suffer by a delay of the approval of the appointment of the assignees, it shall be lawful for said judge, all opposition notwithstanding, to approve previously the said appointment, if he finds that it has been made agreeably by law.

Sec. 2039. That all persons shall be considered as fraudulent bankrupts who shall be convicted of having concealed their property with the intention to keep it from their creditors, as also those who shall be convicted of having concealed or altered their books or papers with the same intention.

Sec. 2040. That every insolvent debtor shall also be considered as a fraudulent bankrupt who shall be convicted of having passed sham deeds for the purpose of conveying the whole or any part of his property and depriving his creditors thereof, or having intentionally omitted any of his property, rights or claims in his schedule, or of having purloined his books, or any of them, or having altered, changed or made them anew, with an intent to defraud his creditors, or of having fraudulently alienated, mortgaged or pledged any of his property, or of having committed any other kind of fraud to the prejudice of his creditors.

Sec. 2041. If any debtor shall be convicted of having at any time within three months next preceding his failure, fraudulently sold, engaged or mortgaged any of his goods or effects, or of having otherwise assigned, transferred or disposed of the same, or any part thereof, or confessed judgment in order to give a preference to one or more of his creditors over others, [whereby to receive any advantages in anticipation of his failure,] to the prejudice of his creditors, he shall be debarred the benefits of this chapter.

Sec. 2042. All insolvent debtors owing, or accountable in any manner for public funds or property of whatever nature or kind; all unfaithful depositories; all such as refuse or neglect to pay up all funds received by them as bankers, brokers, commission merchants, or for money, goods or effects received by them in a fiduciary capacity, shall be denied the benefit of this chapter.

Sec. 2043. If after presentation of his petition, the insolvent shall sell, or in any manner transfer or assign any of his property, or collect any debts due him, and shall not give a just and true account of the property so sold or transferred and the money so collected, and pay the same over to the assignees within ten days after their appointment and demand made by them, said debtor shall not receive the benefit of this chapter.

Sec. 2044. Whenever any insolvent debtor has had the benefit of this chapter, if thereafter at any time it is made to appear that he has concealed [any part of his property or estate, or given a false schedule,] or committed any fraud under the provisions of this chapter, it is hereby declared that he shall forfeit all benefit and advantage which he would otherwise have had by virtue of this chapter, and he cannot avail himself of any of its provisions, in bar to any claim that may be instituted against him.

SEC. 2045. No person can apply for, or receive the benefit of this chapter, through an agent or attorney in fact.

SEC. 2046. From and after the surrender of the property of the insolvent debtor, all property of such insolvent shall be fully vested in his assignee or assignees for the benefit of his creditors, and shall not be liable to be seized, attached, taken or levied on by virtue of any execution issued against the property of said insolvent; and the assignees who may be appointed shall take possession of, and be entitled to claim and recover, all the said property, and to administer and sell the same as herein provided.

SEC. 2047. If there be any creditors residing without (in) the limits of this territory who have no agent or attorney therein, the judge shall appoint an attorney to represent them; but the fees of said attorney shall in no case be paid by the mass of creditors, but shall be levied on the amount of the sums which shall be recovered for the account of such non-resident creditors, at the rate of ten per centum: *Provided*, That in no case shall the whole fees allowed to counsel appointed on behalf of said creditors, exceed the sum of three hundred and fifty dollars.

SEC. 2048. In case the debtor who applies for the benefit of this chapter should have no property to surrender to his creditors, or if the appraised value of the property exhibited in his schedule should not amount to more than one-third of his debts then existing and contracted during the next year preceding, the judge before whom the application is made shall not admit him to the benefit of this chapter, unless it be proven to the said judge, by affidavit sworn and subscribed to by two credible and disinterested witnesses, that the debtor, in their opinion, has really experienced the losses by him stated, and that the said losses may have reduced him to the situation in which he finds himself: *Provided*, All legal mortgages and liens *bona fide*, existing on such property at the time of surrender aforesaid, shall remain good and valid, and may be enforced in the same manner as though no such surrender had been made.

SEC. 2049. All the goods, titles and claims which the insolvent debtor shall have declared in his schedule, shall be delivered up to the assignees as soon as they shall have been appointed; and in case the debtor should refuse to deliver up the goods, titles, effects or estates in his possession, the judge shall oblige the delivery, either by ordering the sheriff to seize the said property, to be by him delivered up to the assignees, or causing the said insolvent to be imprisoned until the said delivery shall be effected.

SEC. 2050. The assignee or assignees appointed under this chapter shall make out a true account of all disbursements made by them in the discharge of their duties as assignee or assignees, which shall be verified by the oath of such assignee or assignees, and shall deliver the same to the judge having jurisdiction of the subject matter; and such judge shall, in writing, certify such part or parts of the same as he shall deem to be just and necessarily expended by said assignee or assignees in the discharge of their duty, which amount so allowed shall be paid out of the property of such insolvent debtor.

Sec. 2051. One member of a firm or co-partnership may make assignment of the co-partnership property with the consent in writing of the other member, and when all the members join in the petition, and include in the assignment all the individual as well as the partnership property, they may be discharged from their individual and partnership debts in one and the same proceeding; but in such proceeding the partnership property shall be applied towards the payment of the partnership debts, and the individual property to the payment of the individual debts.

Sec. 2052. No assignment of any insolvent debtor, otherwise than is provided in this chapter, shall be legal or binding upon creditors.

## CHAPTER CLXIV.

### LANDLORD AND TENANT.

Section

2053. Tenancy from year to year abolished, except.
2054. Of tenancy for indefinite period; how terminated.
2055. Tenancy terminates at end of term designated.
2056. On failure to pay rent, after ten days' notice.

Section

2057. Tenant by sufferance; who.
2057. Shall surrender on demand.
2058. Possession of premises; how recovered.
2058. In same action rent due may be recovered.

Sec. 2053. Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals.

Sec. 2054. When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of thirty days or more, preceding the end of any of said months or periods, given by either party to the other.

Sec. 2055. In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time.

Sec. 2056. When a tenant fails to pay rent when the same is due, and the landlord notifies him to pay said rent or quit the premises within ten days, unless the rent is paid within said ten days, the tenancy shall be forfeited at the end of said ten days.

Sec. 2057. Whenever any person obtains possession of premises without the consent of the owner or other person having the right to give said possession, he shall be deemed a tenant by sufferance merely, and shall be liable to pay reasonable rent for the actual time he occupied the premises, and shall forthwith on demand surrender his said possession to the owner or person who had the right of possession before said entry, and all his right to possession of said premises shall terminate immediately upon said demand.

Sec. 2058. Whenever any person fails or refuses to give possession of premises at the termination of his right to possession or lease, whether by forfeiture or otherwise, the person entitled to the possession of the premises may regain possession of said premises by an action of forcible entry and detainer, under the provisions of the act entitled "An act relating to justices of the peace and their practice and jurisdiction," and the landlord may in the same action recover the rent due him.

## CHAPTER CXLV.

### DAMAGES FOR INJURIES CAUSED BY USE OF INTOXICATING LIQUORS.

SECTION
2059. Who may recover damages.
2060. License shall not be granted except on written consent of owner that liquors may be sold.
2061. If owner of premises pays damages, may recover of tenant.

SEC. 2059. Every husband, wife, child, parent, guardian, employe, or other person, who shall be injured in person or property, or means of support, by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving intoxicating liquors have caused the intoxication in whole, or in part, of such person; and any person or persons owning, renting, leasing or permitting the occupation of any building or premises, and having knowledge that intoxicating liquors are to be sold therein, or who, having leased the same for other purposes, shall knowingly permit therein the sale of any intoxicating liquors, shall, if any such liquors sold or given therein, have caused, in whole or in part, the intoxication of any person, be liable, severally or jointly, with the persons selling or giving the intoxicating liquors as aforesaid, for all damages sustained, and the same may be recovered in a civil action, in any court of competent jurisdiction. A married woman may bring such action in her own name, and all damages recovered by her shall inure to her separate use; and all damages recovered by a minor under this chapter shall be paid either to such minor or to such person in trust for him, and on such terms as the court may direct. In case of the death of either party the action and right of action to or against his executor or administrator shall survive.

SEC. 2060. No license for the sale of intoxicating liquors shall hereafter be granted without the consent in writing of the owner or lessor of the building or premises in which the business is to be conducted; and the paper containing such written consent shall be kept on file by the officer issuing such license.

SEC. 2061. Any owner or lessor of real estate, who shall pay any money on account of his liability incurred under this chapter, for any act of his tenant, may in a civil action recover of such tenant the money so paid.

## CHAPTER CXLVI.

### CITY CHARTERS AND ORDINANCES.

SECTION
2062 City charters and ordinances; when admissible in evidence.
2063. Existence of any city, how stated in pleadings.
2064. City ordinances, how pleaded.

SEC. 2062. All ordinances passed by any city council or board of trustees or other municipal corporation within the territory of Washington, shall be recorded in a book to be kept for that purpose by the city clerk, or clerk of such board of trustees or municipal corporation of such city, and when so recorded the record thereof so made shall be received in any court of this territory, as prima facia evidence of the due passage of such ordinances as recorded, and this act shall apply as well to all ordinances heretofore as hereafter so passed and recorded. And when the ordinances of any city or town are printed by authority of such municipal corporation the printed copies thereof shall be received as prima facia evidence that such ordinances as printed and published were duly passed.

Sec. 2063. In pleading the existence of any city or town in this territory, it shall be sufficient to state in such pleading that the same is an existing city or town, incorporated or organized under the laws of Washington territory.

Sec. 2064. In pleading any ordinance of a city or town in this territory it shall be sufficient to state the title of such ordinance and the date of its passage, whereupon the court shall take judicial knowledge of the existence of such ordinance and the tenor and effect thereof.

## CHAPTER CLXVII.

### INSANE PERSONS CHARGED WITH CRIME.

Section
2065. To be sent to asylum.
2066. Court, or judge, shall make order.
Section
2066. Expenses of keeping, how paid.

Sec. 2065 All persons now imprisoned by order of the district courts of this territory who were found not guilty of the offense with which they stood charged, in consequence of insanity, and the court deeming it unsafe to the community to discharge them, and so ordered their confinement in prison under the provisions of the statute then in force, [shall] be sent to the asylum provided by the territory for the insane, and there safely kept until cured or otherwise discharged by authority of law.

Sec. 2066. The district court or judge thereof which had cognizance of and tried the case, is hereby authorized and required to make an order requiring the sheriff of the county, where the party is confined, to transport such insane person, without delay, to the said asylum, and the superintendent of said asylum is required to receive such persons in said asylum and care for them as he cares for other insane patients: *Provided*, That in no case shall the territory be chargeable for the transportation and keeping of such insane persons when such insane persons may have sufficient property, real or personal, to defray the expense of said transportation and keeping at the asylum; but if such insane persons are not able to pay the expense of such transportation, then such expense shall be paid by the territory in the same manner as is usually paid for the transportation of insane persons.

## CHAPTER CLXVIII.

### TO CLOSE BUSINESS HOUSES AND PREVENT THE SALE OF INTOXICATING LIQUORS ON SUNDAY.

Section
2067. No place of business to open for trade; exception.
2068. Fine prescribed.
Section
2069. Officers must make complaint.
2070. Officers how punished, neglecting to complain.
2071. Law in force December 31st, 1881.

Sec. 2067. It shall be unlawful for any person or persons of this territory, to open on Sunday for the purposes of trade, or sale of goods, wares and merchandise, any shop, store or building, or place of business whatever: *Provided*, That this chapter shall apply to hotels only in so far as the sale of intoxicating liquors is concerned, and shall not apply to drug stores, livery stables and undertakers.

SEC. 2068. Any person or persons violating the foregoing section shall be guilty of a misdemeanor and on conviction thereof be fined in any sum not less than twenty-five nor more than one hundred dollars.

SEC. 2069. And it shall be the duty of any and all public officers of this territory, knowing of any violation of this chapter to make complaint, under oath, to the nearest justice of the peace from where the offense was committed.

SEC. 2070. Any public officer who shall refuse or willfully neglect to inform against and prosecute offenders against this chapter shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, and the court before which such officer shall be tried shall declare the office or appointment held by such officer vacant for the balance of his term.

SEC. 2071. This law to take effect and be in force from and after the last day of December, 1881.

## CHAPTER CXLIX.

### SMOKING AND INHALING OPIUM.

SECTION
2072. Unlawful to keep house for smoking opium.
2073. Crime to visit house kept for smoking opium.

SECTION
2074. Necessary evidence to convict.

SEC. 2072. Any person or persons who shall hereafter keep a house, cellar or any other place in which such person or persons, or any other person or persons, smoke or inhale opium shall be deemed guilty of a misdemeanor, and upon conviction thereof, in any court of competent jurisdiction, shall be fined in any sum not exceeding one thousand dollars or imprisonment not more than one year, or both, in the discretion of the court.

SEC. 2073. Any person or persons who shall visit such house, cellar or other place for the purpose of smoking or inhaling opium shall, for the first offense, be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars or imprisonment not to exceed one month, or both, in the discretion of the court, and for any subsequent offense, such person or persons so offending shall be imprisoned not to exceed three months.

SEC. 2074. It shall not be necessary, in order to prove the guilt of any person or persons keeping such house or other place for smoking or inhaling opium, that any one should be found smoking or inhaling therein; but the finding of the pipes, opium or other appliances used for the purpose of smoking or inhaling opium therein shall be deemed sufficient evidence of the violation of this act. Nor shall it be deemed necessary, in order to prove the guilt or to convict any person or persons of smoking or inhaling opium that they shall be found in the act of smoking or inhaling, but evidence that such person or persons were found in such house or other place in possession of opium pipes or under the influence of opium shall be deemed sufficient evidence for conviction.

# CHAPTER CL.

## CITY AND COUNTY PRISONERS.

SECTION
2075. Person convicted, may be ordered to work out fine and costs upon public roads, streets and grounds.
SECTION
2076. Person sentenced to term of imprisonment may be compelled to work upon public roads, etc.

SEC. 2075. When a person has been sentenced by any justice of the peace in a city in this territory to a term of imprisonment in the city jail, whether in default of payment of a fine or otherwise, such person may be compelled on each day of such term, except Sundays, to perform eight hours' labor upon the streets, public buildings, and grounds of such city and to wear an ordinary ball and chain, while performing such labor.

SEC. 2076. When a person has been sentenced by a justice of the peace, or a judge of the district court, to a term of imprisonment in the county jail, whether in default of payment of a fine, or costs or otherwise; such person may be compelled to work eight hours, each day of such term, in and about the county buildings, public roads, streets and grounds: *Provided*, This chapter shall not apply to persons committed in default of bail.

# CHAPTER CLI.

## EMPLOYMENT OF JAILERS AND COMPENSATION.

SECTION
2077. When county commissioners may employ jailor and compensation of jailor.
SECTION
2077. Not to apply to certain counties.

SEC. 2077. Whenever the board of county commissioners of any county of Washington territory deem it necessary for the sheriff of any county to employ assistance for the safe keeping of any person or persons in custody of said sheriff on criminal charge or otherwise, it shall be lawful for said commissioners to authorize said sheriff to employ one or more jailers for such purpose, and said county shall pay said jailer quarterly out o any funds in the county not otherwise appropriated: *Provided*, Such compensation shall in no case exceed fifty dollars per month and shall be fixed by said board of county commissioners: *Provided*, That this section shall not include the counties of Clarke, Cowlitz and Pierce.

# CHAPTER CLII.

## GRAND AND PETIT JURORS.

SECTION
2078. Competency of, defined.
2079. Who shall be exempt from serving.
2080. County commissioners shall prepare jury list.
2081. How jurors are apportioned by the judge.
2082. Venire for jurors; when to issue.
SECTION
2083. Court may cause jurors summoned; when.
2084. Judge shall apportion until commissioners furnish lists, etc.
2085. Neglect of any foregoing duties, a contempt.

SEC. 2078. All qualified electors shall be competent to serve as petit jurors, and all qualified electors and householders shall be competent to serve as grand jurors within the county in which they reside, and within any county or district to which such county may be attached for judicial purposes.

SEC. 2079. Civil officers of the United States, justices of peace, judges of the probate court and judges of the supreme court, attorneys at law, ministers of the gospel or priests, school teachers, practicing physicians, sheriffs and their deputies, constables, clerks of courts, county and territorial officers, millers, ferrymen, active firemen and all persons over sixty years of age, shall not be compelled to serve as jurors, and in preparing jury lists the county commissioners shall omit the names of such persons; but no act of a grand or petit jury shall be invalid by reason of such person, or persons aforesaid serving thereon qualified in other respects. Nor shall any disqualification of any member of a grand or petit jury affect the indictment or verdict, unless the juror for that cause was challenged or excepted to before the rendition of their finding.

SEC. 2080. Every board of county commissioners on or before the first Monday of May in each year, shall cause to be prepared, and thereafter shall keep in the office of the county auditor, two jury lists, one of which shall contain the names of all persons qualified to serve in their county as petit jurors, and the other the names of all persons qualified to serve as grand jurors. As soon as said lists are prepared and said commissioners are met, they shall select therefrom the names of twenty-five persons qualified to serve as petit jurors and the names of tweny-five other persons qualified to serve as grand jurors and shall certify the same in separate lists to the clerk of the district court of the judicial district in which the county may be.

SEC. 2081. Biennially on or before the first Monday of May next after the election of a delegate to congress, the secretary of the territory shall transmit to the clerk of the district court in each judicial district a statement of the whole number of votes cast for delegate in such county of such district at the said election. Upon receipt of such statement, the clerk shall submit the same to the judge of the district, who shall thereupon, from time to time proportionally according to the number of said votes cast in the several counties respectively of each sub-district, allot and determine the number of grand and petit jurors to be summoned from the several counties to attend each term of the court respectively, until a new allotment is made; which number for each sub district shall not be less than fourteen, nor more than twenty-three for grand jurors, nor less than twelve nor more than twenty-five for petit jurors.

SEC. 2082. Thirty days before each term of court, unless the judge of the district shall by order otherwise direct, the clerk of the court shall conformably to the last allotment and determination of the judge, issue to the sheriff of each county for which the term is held two venires, one for grand and the other for petit jurors, to attend at the said term. The venires shall be returnable at such time as the judge shall designate. The persons to be served therewith shall as far as possible be named in the venires, and their names shall be taken from the lists last furnished by the county commissioners, in the order in which they occur on said lists: *Provided*, That no person shall serve twice as a grand juror, or twice as a petit juror, within two years.

SEC. 2083. When from any cause there are no qualified grand, or no qualified petit jurors, or not a sufficient number of each in attendance, the court may, without naming them in the venire, order as many as may be necessary to be summoned from any county or counties in the district.

SEC. 2084. Until the apportionment and selection of jurors, as provided in this chapter, the judge of the district court in each district shall apportion to each county the number to be furnished by each county, and the clerk of the district court shall issue venires to the sheriff of each of the sever l counties commanding him to summon from his county the requisite number of qualified grand and petit jurors, returnable as the judge shall direct.

Sec. 2085. Any person neglecting to perform any duty imposed upon him by this chapter shall be punishable as for a contempt of court.

## CHAPTER CLIII.

### FEES AND COSTS.

Section
2086. Fees prescribed clerks of courts, sheriff, probate judge, justices of peace, county auditor, constables, commissioners, jurors, witnesses, notary public, coroners, interpreters, secretary of territory and county surveyors.
2087. Certain officers to keep fee book.
2088. District judge to give this chapter in charge to grand jury.
2089. Penalty for violating section 2087.
2090. Penalty for taking illegal fees.
2091. Officers to set up table of fees; penalty for not so doing.
2092. If publication is required, cost may be demanded.
2093. Meaning of word "folio"; what "filing" shall include.
Section
2094. Rule for computing mileage.
2095. Attorney cannot be paid as witness.
2096. No fee allowed for administering oath of office.
2097. Mileage of officers residing at county seat; how computed.
2098. Officers performing services for which fees not allowed; how compensated.
2099. Fees except for county and territory due in advance.
2100. Witnesses in civil cases may demand one day's attendance and mileage.
2101. Fees due by clerk of county commissioners, paid on order of board.
2102. Officers on demand shall make out bill of fees.

Sec. 2086. The fees and compensation of the several officers and persons hereinafter named, shall be as follows, to-wit:

#### FOR CLERKS OF THE SUPREME AND DISTRICT COURTS.

| | |
|---|---|
| For filing declaration, petition, plea, demurrer, affidavit, exhibit or other paper, in each cause, each | $ 10 |
| For issuing capias, attachment, execution, certiorari, supersedeas, habeas corpus, information, mandate, writ of error or replevin and for any other original writ, each | 1 00 |
| For entering each writ | 25 |
| For issuing writs of venditioni exponas or order of sale, every hundred words | 20 |
| For entering appearance of either party, personally or by attorney, charged but once | 25 |
| For entering sheriff's return on any writ, for every folio | 25 |
| For docketing appeals from justices' of the peace court | 25 |
| For docketing each cause, to be charged but once | 25 |
| For writs for each special venire for jury, charged in each cause tried | 50 |
| For receiving panel and swearing jury | 25 |
| For swearing witnesses, each | 15 |
| For entering claim for each witness for their attendance | 15 |
| For endorsing on sheriff's deeds, the following: "Presented and entered in book of levies," and certifying the same as required by law | 1 00 |
| For entering judgment, recognizance, special rule, continuance, discontinuance, retraxit, rule of reference, allowance of writ of habeas corpus, confession of judgment, default or consent, rule or plea, notice of appeal to supreme or district court, each | 50 |
| For entering surrender of principal by bail, exonerating, canceling bail bond, discharge of recognizance, issue joined, motion, nonsuit, report of referees, judgment upon any issue of law or fact, or on any report of referees, appeals from inferior courts, appeals to higher courts, and acknowledgments | 50 |

| | |
|---|---|
| For taking affidavits, each | 25 |
| For certifying affidavits with seal attached, each | 1 00 |
| For writing affidavits, per folio of one hundred words | 25 |
| For taking depositions, per folio | 20 |
| For issuing subpœnas, one or more names | 50 |
| For calling and swearing talesman, each | 15 |
| For giving order to each juror for his attendance | 50 |
| For approving bonds, including justification | 1 00 |
| For copying papers, per folio | 20 |
| For certificate and seal | 1 00 |
| For entering a declaration of intention to become a citizen of the United States | 1 00 |
| For certificate of such entry under a seal of the court | 2 00 |
| For entering the final admission of an alien to the rights of citizenship, and for a certified copy thereof, under the seal of the court | 3 00 |

### FOR SHERIFF.

| | |
|---|---|
| For service of every summons and complaint, and return thereof on each defendant, besides mileage | 1 00 |
| For levying each writ of execution on real or personal property, besides mileage | 1 00 |
| For levying each writ of attachment on real or personal property besides mileage | 1 00 |
| For service of capias ad satisfaciendum upon the body of each defendant named in the writ | 1 00 |
| For every bail bond | 1 00 |
| For serving writ of possession without the aid of the county, besides mileage | 2 00 |
| For serving writ of possession with the aid of the county, besides mileage | 3 00 |
| For executing writ of inquiry and returning the same with inquisition | 2 00 |
| For copy of any complaint, notice, writ or process necessary to complete a service, for each one hundred words | 20 |
| For serving and returning subpœna to witness, besides mileage, for each person therein named | 40 |
| For summoning each grand and petit juror, besides mileage | 25 |
| Per centage on all moneys actually made and paid to the sheriff on execution or order of sale, under one thousand dollars, two per centum. | |
| Percentage on all sums over one thousand dollars, one per centum. | |
| For serving declaration in ejectment and return, besides mileage | 1 00 |
| For making a deed of land sold on execution, decree or order of court, to be paid by the grantee | 6 00 |
| For serving scire facias for each defendant, besides mileage | 1 00 |
| For calling jury | 25 |
| For calling each witness | 10 |
| For bringing up a person on a writ of habeas corpus, besides mileage | 1 00 |
| For each day's attendance on any court of record | 3 00 |
| For posting each notice, besides mileage | 50 |
| For executing a sentence of death | 50 00 |

| | |
|---|---|
| For each mile necessarily traveled in going to and returning from the county seat to the place of service | 10 |

### FOR JUDGES OF THE PROBATE COURT.

| | |
|---|---|
| For granting letters of administration | 1 00 |
| For probate of will or testament | 1 00 |
| For granting letters testamentary | 1 00 |
| For granting letters testamentary, when the same are contested | 3 00 |
| Taking bonds in any case | 1 00 |
| Hearing complaints against lunatics | 5 00 |
| Appointing guardian | 75 |
| Decree of settlement of an estate | 1 00 |
| Decree of settlement of an estate when contested | 2 00 |
| Order of distribution | 1 00 |
| Examining inventory of appraisement or return of sale and filing the same in office, each | 75 |
| Every writ or process under seal | 50 |
| Each order of court on record | 50 |
| Examining accounts, each one hundred words, counting two figures for a word | 25 |
| Warrant to appraise or divide an estate | 75 |
| Issuing commission | 1 00 |
| Allowing an appeal | 25 |
| Assigning dower in real estate | 1 00 |
| Assigning personal estate to widow | 1 00 |
| Refusing letters of administration or probate of will, to be paid by the losing party | 2 00 |
| For every continuance when asked by a party | 50 |
| Order for partition of real estate | 1 00 |
| Allowing reports on the accounts of executors or administrators | 50 |
| Extending letters of administration | 50 |
| Decree respecting the probate of will or codicil | 1 00 |
| Filing each paper | 10 |
| Administering an oath | 15 |
| Recording all papers required by law to be recorded, for each one hundred words | 20 |
| Order of apportionment of an insolvent estate among the creditors | 2 00 |
| Acknowledgment with seal | 75 |
| Entering appointment of executors, administrators or guardians, or other appointment necessary | 50 |
| Issuing letters of guardianship | 75 |
| For hearing each contested case, to be taxed as costs against the party in default | 5 00 |
| Issuing citations to executors, administrators and guardians | 50 |
| Copies of papers and records, each one hundred words | 20 |

*Provided*, That in counties where compensation is fixed by law for probate judges said special laws shall govern where conflicting with this section.

### FOR JUSTICES OF THE PEACE.

| | |
|---|---|
| For issuing notice | 50 |
| For issuing warrant in criminal cases | 1 00 |

| | |
|---|---|
| For taking recognizance of bail, including justification | 1 00 |
| For committing to jail | 50 |
| For every subpœna | 25 |
| For each name in subpœna after the first | 10 |
| For entering judgment on trial | 50 |
| For entering judgment of confession or default | 50 |
| For each folio of certified copy of proceedings, or appeals certiorari or otherwise | 20 |
| For every adjournment at request of either party | 50 |
| For swearing witnesses, jurors or arbitrators, each | 15 |
| For issuing writ of attachment | 1 00 |
| For scire facias | 1 00 |
| For entering discontinuance or satisfaction | 50 |
| For taking acknowledgments of deeds or other instruments, each person | 50 |
| For venire of jury | 1 00 |
| For writ of restitution | 1 00 |
| For taking affidavits, each | 25 |
| For attending with clerk of county commissioners at the opening of polls, per diem | 3 00 |
| For issuing writ of replevin | 75 |
| For filing each paper in a cause | 15 |
| For approving a bond, including justification | 50 |
| For administering an oath | 15 |
| For taxing costs in any cause | 50 |
| For taking depositions, for each folio | 20 |
| For making certified copies of any proceedings in his court, or before him, for each folio | 20 |
| For solemnization of marriages and making return thereof | 5 00 |

### FOR COUNTY AUDITORS.

| | |
|---|---|
| For making out assessment roll to county assessor, for each quire *such roll may contain* | 10 00 |
| For making out original tax duplicate, for each one hundred words such duplicate may contain, counting every two figures as a word, excluding calculations | 25 |
| For making out exhibits of receipts and expenditures of county for past year, for each one hundred words, counting every two figures as a word, excluding calculations | 25 |
| For each settlement of his accounts, or of any other officer with the county | 1 00 |
| For filing each paper, exhibit or necessary document connected with the duties of his office | 10 |
| For attending each regular and special term of the board of county commissioners, per diem | 3 00 |
| For recording proceedings of board of county commissioners, for each one hundred words | 20 |
| For each order drawn on county treasurer | 20 |
| For copy of an order drawn upon the order of the board | 50 |
| For drawing each receipt | 10 |
| For each notice delivered to the sheriff for general or special election | 50 |

| | |
|---|---|
| For opening and examining election returns and making abstract of notes and copies thereof, per diem | 3 00 |
| For each certificate of election to be paid by the county | 50 |
| For recording deeds, per folio | 20 |
| For each order for view of road | 1 00 |
| For taking bonds of county officers and all other persons required by the board or by law to give bonds, each | 1 00 |
| For administering an oath | 15 |
| For each bond executed by the county commissioners to purchaser of county property, and other purposes | 2 00 |
| For each deed executed by county commissioners | 3 00 |
| For each poll book delivered to sheriff or judges of election | 1 00 |
| For filing each bond, oath, receipt, bill, order, appointment and petition, report, resignation, deed, affidavit, and all other papers required to be put on file | 10 |
| For issuing each license under seal, to grocery, tavern, ferry, or to peddlers, showmen, or managers or owners of circuses, and all other business, to be paid by the party to whom granted | 75 |
| For entering license on record | 20 |
| For entering the approval by county commissioners of licenses granted in vacation in each case, to be paid by applicant | 1 00 |
| For notifying clerk of district court of the selection of grand and petit jurors, each list | 1 00 |
| For all writs ordered issued by the board required by law, the same fees as are allowed the clerk of the district court for similar services. | |
| For reading and entering report of road viewers | 50 |
| For entering appointment of road viewers | 50 |
| For notifying justice of the peace or county commissioners to attend at the opening and of election returns | 50 |
| For certifying copy of commissioners' proceedings or parts thereof, for each one hundred words, to be paid by the party requiring such copy | 20 |
| For filing each deed or instrument of writing for record | 10 |
| For making settlement of account with the county, per folio | 20 |
| For each certificate as recorder of liens on record against the property of any person | 50 |

The fee of a county auditor for issuing a license of marriage, and recording a certificate of the performance of the marriage ceremony shall be $2.00, which fee shall be paid at the time the license is issued, by the party applying for the same.

### FOR CONSTABLES.

| | |
|---|---|
| For serving complaint and notice on each defendant, besides mileage | 1 00 |
| For service and return of a capias or warrant, besides mileage | 1 00 |
| For committing to prison, besides mileage | 1 00 |
| For serving an execution on goods, besides mileage | 1 00 |
| For every day's attendance upon any court of record | 3 00 |
| For summoning jury before justice of peace | 1 50 |
| For each mile necessarily traveled in going to and returning from the court to the place of service | 10 |

### FOR COUNTY COMMISSIONERS.

| | |
|---|---|
| For service per diem, besides mileage | 4 00 |
| Mileage going to the county seat, for each mile traveled | 10 |

### JURORS.

| | |
|---|---|
| Each grand and petit juror shall be allowed for each day's attendance on a court of record, if not a talesman | 3 00 |
| Talesman serving as a petit juror, each trial, when he may be detained more than one day, per diem | 3 00 |
| For every day's attendance upon justice of the peace courts, besides mileage | 2 00 |
| For serving on inquest | 2 00 |
| Mileage each way, per mile | 10 |

*Provided*, That the mileage and per diem paid by United States shall be deducted from amount allowed by the court.

### WITNESSES.

| | |
|---|---|
| For each day's attendance upon the district, county commissioners', probate and justice's courts | 2 00 |
| Mileage each way | 10 |

### NOTARY PUBLIC.

| | |
|---|---|
| For every protest of a bill of exchange or promissory note | 2 00 |
| Attesting any instrument of writing and seal | 1 00 |
| Noting a bill of exchange or promissory note for non-acceptance or non-payment | 1 00 |
| Taking acknowledgment of any legal instrument, with seal attached, $1.00, and for each additional person, 50 cents. | |
| Registering protest of bill of exchange or promissory note | 1 00 |
| Certifying an affidavit with seal attached, and all other certificates under seal | 1 00 |
| Each oath or affirmation, without seal | 50 |
| Being present at demand, tender or deposits, and noting the same, besides mileage at ten cents per mile | 1 00 |
| For any instrument of writing drawn by a notary public, for each one hundred words | 25 |

### CORONERS.

| | |
|---|---|
| For each inquest he may hold, besides mileage | 10 00 |
| When performing the duties of sheriff he shall receive the same fees as sheriffs are entitled to receive for services performed. | |
| For drawing all necessary writings, each one hundred words | 20 |
| For issuing venire | 1 00 |
| For mileage each way per mile | 10 |

### INTERPRETERS AND TRANSLATORS.

Interpreters and translators shall receive such fees as the court by whom they are employed shall certify to be just.

### SECRETARY OF THE TERRITORY.

| | |
|---|---|
| For issuing commission to commissioners of deeds | 2 50 |
| For each certificate, with seal attached | 1 00 |
| For copy of any matter of record or on file in his office, per folio | 25 |

County surveyors shall receive the compensation allowed by the provisions of the chapter entitled "county surveyor."

Sec. 2087. It shall be the duty of the clerks of the supreme and district courts, sheriffs, auditors, judges of the probate courts, justices of the peace, to keep severally a book to be called the "fee book," in their respective offices, in which they shall enter all the fees charged by them; and said books shall be open to the inspection of any one desiring to inspect the same, in which shall be stated the fees charged for, in detail, with the title of the matter, proceeding or action in which they are charged.

Sec. 2088. It shall be the duty of the district judge to give this chapter especially in charge to the grand jury.

Sec. 2089. Any officer who shall violate any of the provisions of section 2087 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one thousand dollars.

Sec. 2090. If any officer shall take more or greater fees than are herein allowed, he shall be liable to indictment, and on conviction shall be removed from office and fined in any sum not exceeding one thousand dollars.

Sec. 2091. Every officer whose fees are as ascertained and fixed by this chapter shall publish and set up in his office a table of the fees allowed him according to this chapter, within one month after its passage, in some conspicuous place, for the inspection of all who may have business in his office, upon pain of forfeiture for each day of his omission so to do, a sum not exceeding twenty dollars, which may be recovered by any person by action before any justice of the peace of the same county, with costs.

Sec. 2092. When, by law, any publication is required to be made by an officer of any suit, process, notice, order or other papers, the costs of such publication shall, if demanded, be tendered by the party procuring such publication before such officer shall be compelled to make publication thereof.

Sec. 2093. The term "folio" when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every two figures necessarily used as a word. Any portion of a folio, when in the whole draft or paper there should not be a complete folio, and when there shall be an excess over the last folio exceeding a quarter, it shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same.

Sec. 2094. When any sheriff, constable or coroner serves more than one process in the same cause or on the same person not requiring more than one journey from his office, he shall receive mileage only for the most distant service.

Sec. 2095. No attorney in any case shall be allowed any fees as a witness in such case.

Sec. 2096. No fees shall be charged by any officer for administering and certifying the oath of office.

Sec. 2097. Mileage of officers who are required to reside at the county seat, shall be computed from the court-house of the county, and every portion of a mile shall be computed as one mile.

Sec. 2098. Each and every officer who shall be called on or required to perform services for which no fees or compensation are provided for in this chapter, shall be allowed fees similar and equal to those allowed him for services of the same kind for which allowance is made herein.

Sec. 2099. All fees are invariably due in advance where demanded by the officer required to perform any official act, and no officer shall be required to perform any official act unless his fees are paid when he demands the same: *Provided*, This section shall not apply when the officer performs any official act for his county or the territory.

Sec. 2100. Witnesses in civil cases shall be entitled to receive, upon demand, their fees for one day's attendance, together with mileage going to the place where they are required to attend, if such demand is made to the officer or person serving the subpœna at the time of service.

Sec. 2101. The clerk of the county commissioners shall, in all cases where his fees are paid out of the county treasury, be paid by order of said commissioners, who shall be satisfied of the correctness of his account, and the same shall be authenticated by his oath and filed with the county treasurer.

Sec. 2102. All officers shall, when requested so to do, make out a bill of their fees in every case, and for any services, specifying each particular item thereof, and receipt the same when it is paid, which bill of fees shall always be subject to examination and correction by the several courts; and any officer who refuses or declines to comply with the requirements of this section shall forfeit his fees in every case.

## CHAPTER CLIV.

### COSTS IN CERTAIN CASES.

Section
2103. Who liable for costs.
2104. When complainant liable.
2105. Conviction carries costs.
2106. In conviction for felony.
2107. Duty of county auditor and county treasurer in cost bills in convictions for felony.
2108. Sheriff in conveyance of prisoner may employ guards; compensation.

Section
2109. Juror, witness or officer attending court out of his county, to receive certificate from clerk.
2110. Liability of county for expenses of prisoners, jurors and sheriff.
2111. County to furnish court house, jail and expenses of courts.
2112. Costs and forfeited recognizances go to county from which case came.

Sec. 2103. When any person shall be brought before a court, justice of the peace or other committing magistrate of any district, county, city or town in this territory, having jurisdiction of the alleged offense, charged with the commission of a crime or misdemeanor, and such complaint upon examination shall appear to be unfounded, no costs shall be payable by such acquitted party, but the same shall be chargeable to the county, city or town for or in which the said complaint is triable, but if the court, justice of the peace or other magistrate trying said charge, shall decide the complaint was frivolous or malicious, the judgment or verdict shall also designate who is the complainant, and may adjudge that said complainant pay the costs. In such cases a judgment shall thereupon be entered for the costs against said complainant, who shall stand committed until such costs be paid or discharged by due process of law.

Sec. 2104. When a grand jury, upon a complaint submitted to them for investigation, fail to find a bill of indictment for an offense against the laws of the territory, they shall also inquire whether the complaint is frivolous or malicious, and decide whether the county or complainant shall pay the costs, and make return of their finding in open court. Any complainant adjudged by said grand jury as liable for the costs, shall forthwith be brought into court and sentenced to pay the same or stand committed until such judgment is satisfied or complied with.

SEC. 2105. Every person convicted of a crime or held to bail to keep the peace, shall be liable to all the costs of the proceedings against him, including, when tried by a jury in the district court, twelve dollars for a jury fee, and when tried by a jury before a committing magistrate, six dollars for jury fee, for which judgment shall be rendered and collection had as in cases of fines. The jury fee, when collected for a case tried by the district court, shall be paid to the clerk, to be by him applied as the jury fee in civil cases is applied.

SEC. 2106. In all convictions for felony, whether capital, or punishable by imprisonment in the penitentiary, the clerk of the district court shall forthwith, after (silence) [sentence,] tax the costs in the case. The cost bill shall be made out in triplicate, and be examined by the prosecuting attorney of the district, embracing the county in which the trial was had; after which the judge of the district court shall audit and allow such bill or so much thereof as is allowable by law. The clerk of the district court, shall thereupon, under his hand, and the seal of the court, certify said triplicate cost bills, and shall file one with the papers of the cause, and shall transmit one to the county auditor, and one to the county treasurer of the county in which said felony was committed.

SEC. 2107. Upon the receipt of the cost bill, as provided for in the preceding section, the county auditor shall draw warrants for the amounts due each person, as certified in said cost bill, which warrants shall be paid as other county warrants are paid. And the county treasurer shall transmit to the territorial treasurer the cost bill received by him from the clerk of the court, and he shall credit said county with the amount thereof, as so much paid on account of territorial tax, and transmit to the treasurer of the county his receipt for the same. The county treasurer shall reserve the amount stated in said cost bills, by him from time to time transmitted to the territorial treasurer, from the territorial tax, coming into his hands, and charge the same to the territorial treasurer, as so much paid on account of territorial taxes; and he shall notify the county auditor, that so much money collected as territorial fund, [has been transferred to the general fund] of the county for the payment of such cost bills.

SEC. 2108. In the necessary, and actual transportation of prisoners to await or attend trial the sheriff may employ necessary guards, not to exceed one for each prisoner. Said guard shall be allowed two dollars per day and mileage. The sheriff shall be allowed in conveying prisoners to and from the county to the place of trial, or to and from the place of confinement, the mileage of officer, guard, or guards, and prisoner or prisoners, or else the actual expenses incurred.

SEC. 2109. Whenever a juror, witness or officer is required to attend a court, or travel on official business out of the limits of his own county, and entitled to mileage, in lieu thereof he may at his option receive his actual and necessary traveling expenses by the usually traveled route in going to and returning from the place where the court is held, or where the business is discharged. At the close of each term of the district court, the clerk shall ascertain the amount due each juror for his mileage and per diem; and he shall also certify the amount of fees that may be due to the sheriff of any other county than that in which the court is held, who may have attended the term, having a prisoner in custody charged with or convicted of a crime, or for the purpose of conveying such prisoner to or from the county, which, when approved by the court or judge, shall be a charge upon the county to which the prisoner belongs; and he shall also certify the amount which may be due witnesses attending from another county in a criminal case for their fees, which, when approved by the court or judge, shall be a charge upon the county to which the case belongs.

Sec. 2110. Each county shall be liable to pay the per diem and mileage, or other compensation in lieu thereof, to jurors of the county attending the district court; the fees of the sheriff for maintaining prisoners charged with crimes, and his costs in conveying them to and from the district court, as well as their board while there; the per diem and mileage, or such other compensation as is allowed in lieu thereof, of the sheriff of the county, when in criminal cases he is required to attend or travel to the district court out of the limits of his own county; the costs in criminal cases taken from the county to the district court: *Provided*, That none shall be so paid by the treasurer unless the particular items shall be approved by the judge and certified by the clerk under the seal of the court: *And*, *provided further*, That for the time or travel which may be paid by the parties or United States, no payment from the county fund shall be allowed, and no officer, juror or witness shall receive from the county double pay as a per diem for the same time, or as traveling expenses or mileage for the same travel, in how many different capacities, or in however many different causes they may be summoned, notified or called upon to testify or attend in.

Sec. 2111. The county in which the court is held shall furnish the court house, a jail or suitable place for confining prisoners, books for record, stationery, lights, wood, attendance, and other incidental expenses of the court house and court which are not paid by the United States.

Sec. 2112. All costs collected against any person convicted of crime or misdemeanor, and all sums collected on recognizances of persons accused, or of witnesses in criminal cases for fines and forfeitures, shall belong to the county from which the case came.

## CHAPTER CLV.

### COURTS.

Section
2113. Supreme court; when and where held.
2114. District courts; when and where held.
2115. Time and place in first judicial district.
2116. Counties embraced in sub-districts.
2117. Courts in the second judicial district.
2118. Counties embraced in sub-districts.
2119. Time and place in the third judicial district.
2120. Counties embraced in sub-districts.
2121. Jurisdiction of district courts.
2122. Courts having United States jurisdiction.
2123. Judge third judicial district may appoint clerk.
2124. Bond and qualification of clerk.
2125. Clerk shall keep office at place of holding court.
2126. Each court shall have a seal.
2127. Writs of error, bills of exception and appeals allowed.

Section
2128. Crimes punished in county where committed.
2129. How courts are to be designated.
2130. When judge may call special term of court.
2131. How special term of court is called.
2132. When order requires attendance of jurors, they must attend.
2133. When jurors fail to attend venire may issue.
2134. Cases which may be tried at special term.
2135. If judge fails to attend, clerk may adjourn court six days.
2136. Power of judge to adjourn court until day certain.
2137. Any judge may hold court in any district.
2138. Powers of judges at chambers in vacation.
2139. Appeals and writs of error may be taken from all final judgments.
2140. Notice to be given of hearing at chambers.

### THE SUPREME COURT.

Sec. 2113. The supreme court of the territory shall be held at Olympia, on the second Monday of July, in each year.

### DISTRICT COURTS.

Sec. 2114. That there shall hereafter be held in this territory, regular terms of the district courts, each year at the times and places hereinafter mentioned.

Sec. 2115. Such courts shall be held: (1) At Walla Walla, on the first Monday of May and the second Monday of November, and hold until the business of the term is transacted. unless sooner adjourned by the court; (2) At Dayton, on the third Monday in June and the first Monday in January, and hold until the business of the term is transacted, unless sooner adjourned by the court; (3) At Colfax, on the second Monday in December, and the first Monday in June and hold until the business of the term is transacted, unless sooner adjourned by the court; (4) At Cheney, on the second Monday in April and the first Monday in October, and hold until the business of the term is transacted, unless sooner adjourned by the court; (5) At the county seat of Stevens county on the third Monday in October and hold until the business of the term is transacted, unless sooner adjourned by the court.

Sec. 2116. (1) The court held at Walla Walla, shall be for the county of Walla Walla; (2) The court held at Dayton shall be for the counties of Columbia and Garfield; (3) The court held at Colfax shall be for the county of Whitman; (4) The court held at Cheney shall be for the county of Spokan; (5) The court held at the county seat of Stevens county shall be for the county of Stevens.

### DISTRICT COURTS, SECOND JUDICIAL DISTRICT.

Sec. 2117. Such courts shall be held at Vancouver, on the first Monday of April, and first Monday of November; at Kalama on the fourth Monday of April. and fourth Monday of November; at Chehalis, Lewis county, on the second Monday of January; at Goldendale, on the third Monday of May and first Monday of October; at Yakima on the first Tuesday after the fourth Monday of May and the first Tuesday after the second Monday of October of each year; at Olympia on the second Monday of June and second Monday of December; at Oysterville, Pacific county, on the second Monday of August.

Sec. 2118. The court held at Vancouver. shall be for the counties of Clarke and Skamania; the court held at Olympia shall be for the counties of Thurston, Mason and Chehalis; the court held at Kalama shall be for the counties of Cowlitz and Wahkiakum; the court held at Oysterville shall be for the county of Pacific; the court held at Chehalis shall be for the county of Lewis; the court held at Goldendale shall be for the county of Klickitat; the court held at Yakima city shall be for the county of Yakima, and the several courts mentioned herein shall be held by the judge of the second judicial district.

### COURTS IN THE THIRD JUDICIAL DISTRICT.

Sec. 2119. Such courts shall be held: (1) At Port Townsend on the first Monday in March and the first Monday in September, and hold two weeks, unless sooner adjourned; (2) At Snohomish city in Snohomish county, on the third Wednesday in March and the third Wednesday in September, and hold two weeks, unless sooner adjourned; (3) At Seattle, on the second Monday in April and the second Monday in October and hold four weeks, unless adjourned; (4) At New Tacoma on the third Monday in May and the third Monday in November, and hold two weeks, unless sooner adjourned; (5) At La Conner on the third Tuesday in June and the third Tuesday in December, and hold two weeks, unless sooner adjourned.

SEC. 2120. The court held at Seattle shall be for the counties of King and Kitsap; the court held at Port Townsend shall be for the counties of Jefferson, Island, San Juan and Clallam; The court held at La Conner shall be, for the district embraced within the present boundaries of Whatcom county; the court held at New Tacoma shall be for the county of Pierce; the court held at Snohomish city shall be for the county of Snohomish.

### PROVISIONS APPLICABLE TO ALL THE COURTS.

SEC. 2121. The courts herein mentioned are hereby established as district courts, and they shall have, by mandamus, prohibition and certiorari, the supervision and control of all proceedings before probate courts, justices of the peace, and other inferior tribunals. They shall, except where it is otherwise provided by law, have original and general jurisdiction of all matters at law, and of all cases in admiralty and of all cases in equity, and of all cases for divorce, and also of all crimes and misdemeanors. They shall have appellate jurisdiction in all cases, civil or criminal, where appeal or writ of certiorari shall be taken from the judgment or proceedings of a probate court, justice of the peace, or other inferior tribunal. They shall also have jurisdiction of all other matters made cognizable therein by any statute.

### UNITED STATES COURTS.

SEC. 2122. The following courts, and none other shall have jurisdiction in causes to which the United States is a party: The court held at Walla Walla; the court held at Colfax; the court held at Cheney; the court held at Olympia; the court held at Kalama; the court held at Yakima city; the court held at New Tacoma; the court held at Seattle, and the court held at Port Townsend.

### PROVISIONS APPLICABLE ONLY TO THE THIRD JUDICIAL DISTRICT.

SEC. 2123. The judge authorized to hold the courts herein provided for shall appoint a clerk for each of said courts, and such clerk shall hold his office during the pleasure of said judge, and with the consent of said judge he may appoint one or more deputies: *Provided, however*, That the clerks or deputy clerks heretofore appointed and acting in district courts held at any of the places designated in this act, shall remain in office until removed by said judge and the bonds given by them as such clerks or deputies shall remain in force during their term of office.

SEC. 2124. The clerk or deputy clerk of courts herein mentioned, hereafter appointed shall, before entering upon the duties of his office, take an oath to faithfully perform such duties, and in addition thereto he shall give a bond with sureties to the territory in such sum as the judge appointing him shall require, conditioned to faithfully account for and pay over to the person entitled thereto, all sums of money that may come into his hands by virtue of his office. Such bond must be approved by the judge appointing him. Any person aggrieved by the omission of such clerk or deputy to fulfill the conditions of his bond has a right of action in his own name against such clerk and his deputies on their official bond for any damages he may have sustained by reason of such omission.

Sec. 2125. The offices of the clerks of the courts established by this act shall be at the places where said courts are held and they shall be kept open at all reasonable hours.

Sec. 2126. Each of said courts shall be provided with a seal, if one is not already provided.

Sec. 2127. Writs of error, bills of exceptions and appeals shall be allowed in all cases from the final decisions of any of the courts established by this code, to the supreme court of the territory, under such regulations as may be prescribed by law.

Sec. 2128. Crimes and misdemeanors under the law of the territory, shall be prosecuted and punished in the court having jurisdiction in the county where the offense was committed, unless a change of venue is ordered.

Sec. 2129. In designating the courts herein provided for, it shall be sufficient to designate them, as "the district court" holding terms at —, filling the blank by the name of the place in which said court is held.

### SPECIAL TERMS OF COURT.

Sec. 2130. When from any cause there shall be a failure to hold any regular term of a district court, at the time appointed by law, or when by accumulation of business in any county or district, the judge of such court shall deem it necessary to hold a special term of the district court in or for any such county or district he may appoint a special term of such court, and may require the attendance of the grand or petit jury, or both, at such term.

Sec 2131. The judge appointing such special term shall make an order to the clerk of such court, which order shall be entered by such clerk in the journal of such county, at least thirty day before the commencement of such special term, which order shall specify the day on which such special term will commence, the place where the same will be held, and whether a grand or petit jury or both will be required at such special term, which order must also be published in some newspaper published in and of general circulation in such county or district, if there be one, at least for two publications, the first publication to be not less than twenty days before the commencement of such special term.

Sec. 2132. When the order mentioned in the preceding section requires a grand or petit jury, or both, at such special term, it shall be the duty of the persons named in the venire or venires returnable at the last regular term of the district court for such county or district, to attend as jurors for such special term of court.

Sec. 2134. When from any cause there are no qualified grand, or no qualified petit jurors, or not a sufficient number of either in attendance, the court may, without naming them in the venire, order as many grand or petit jurors or both, as may be necessary, to be summoned from any county or counties in such district.

Sec. 2134. At any special term of court held in pursuance of the provisions of this act, any and all criminal and civil actions, causes or matters, may be heard, tried and determined that might or could be heard, tried or determined at a regular term of such court; and the judge, court, jury and officers of such court may examine, transact, hear and dispose of any and all business and matters, which might or could be examined, transacted, heard or disposed of at a regular term of such court, with like force and effect in all respects, as if done at a regular term of such court.

### ADJOURNED TERMS OF COURT.

Sec. 2135. If, from any cause, any judge of a district court in this territory shall fail to appear on the first day of the term of any term of such court, it shall be lawful for the clerk of such court, or his deputy, to adjourn the court, from day to day for six consecutive days, if necessary, and all business and proceedings transacted at said term shall be legal and valid and of the same force and effect as if the judge had been present on the first day of the term.

Sec. 2136. The judges of the several district courts, in this territory, shall have power and they are each hereby authorized, to adjourn any term of the district court in any county, to a day beyond the time appointed by law for holding a term of such court in any other county or counties in the same district, and at the time to which court shall be adjourned by the judge thereof, all actions, causes, motions and other business which might or could be transacted by the court at a regular term thereof may be entertained, tried and determined with like force and effect as though tried at a regular term of such court: *Provided, however,* That no grand or petit jury shall be summoned to attend at any such adjourned term.

Sec. 2137. Any judge of a district court in this territory may hold court in any district, other than the one to which he is assigned, when requested so to do, by the judge of such other district.

### POWER OF JUDGES AT CHAMBERS.

Sec. 2138. The several judges of the district courts in this territory, and each of them in their respective districts, may, at chambers, in vacation, entertain, try, hear and determine, all actions, causes, motions, demurrers and other matters not requiring a trial by jury; and all rulings, orders, judgments and decrees, made or rendered by a judge of the district court at chambers, may be entered of record in vacation, and shall have like force and effect as though made or rendered at a regular term of the district court.

Sec. 2139. All final orders, judgments and decrees, made or rendered by a judge at chambers, may be reviewed in the supreme court, upon an appeal or writ of error, in the same manner as orders, judgments and decrees made or rendered at regular terms of the district court, and every final order, judgment and decree, made or rendered in vacation, shall be deemed excepted to, at the time the same is made or rendered.

Sec. 2140. When a party to an action has appeared in the same, he shall be entitled to at least three days' notice of any trial, hearing, motion or application to be had or made therein, before any judge at chambers; which motion shall be in writing, setting forth the nature of the motion or application and the grounds thereof, and specifying the time and place where the same will be made, and which may be served on the adverse party or his attorney; but if neither such party or his attorney reside in the county in which the action or proceeding is pending, or where such motion or application is to be made, then service by mail may be had on such party or his attorney, by mailing to either of them a copy of such notice, properly addressed, with the postage thereon paid, at least ten days before the time appointed for such hearing or application.

## CHAPTER CLVI.

### PROSECUTING ATTORNEYS.

SECTION
2141. Election and qualification of.
2142. May appoint deputies.
2143. Shall be public prosecutor.
2144. Not allowed to prosecute suits for divorce.
2145. Must defend divorce suits, when.
2146. Duties when not attending court.
2147. Salary and compensation.
2148. District divided into two prosecuting districts.
2148. One prosecuting attorney elected for each district.
2149. Counties constituting the first district.
2150. Counties constituting the second district.
2151. Salary and compensation.
2152. Must prosecute criminal and civil actions.
2153. Shall not prosecute suits for divorce.
2154. Duty to defend divorce suits, and fees therefor.
2155. Election, qualification and residence of.
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2170. Must visit each county, and duties.
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### IN THE FIRST JUDICIAL DISTRICT.

SEC. 2141. At the general election in one thousand eight hundred and eighty-two, for delegate to congress, and every two years thereafter, there shall be elected by the qualified voters of the counties of Walla Walla, Columbia, Garfield, Whitman, Yakima, Spokane and Stevens, one prosecuting attorney for each of said counties, except the counties of Columbia and Garfield, which shall have one prosecuting attorney jointly, and the counties of Spokan and Stevens, which shall have one [prosecuting attorney jointly,] who shall be a practicing attorney-at-law, and have the qualifications of an elector, and shall reside in and be an inhabitant of the county or district for which he is elected.

SEC. 2142. Each prosecuting attorney, elected under this act, may appoint one or more deputies, not to exceed two, who shall have the same power in all respects as their principal. The appointment shall be in writing, and be signed by the prosecuting attorney, and shall be filed in the office of the auditor of the county where the court is held. He may revoke the appointment of any deputy at will, by writing, filed in the same office. Each deputy, before entering upon his duties, shall take the oath of office, which shall be endorsed on his appointment. The prosecuting attorney may take from each of his deputies a bond with sureties for the faithful performance of his duties; but the prosecuting attorney and the sureties on his bond shall be liable for all the official acts of each deputy: *Provided*, Such deputy shall receive his compensation from his principal, and no additional fees or salary shall be allowed any prosecuting attorney for such purpose.

SEC. 2143. The prosecuting attorney in each of said counties or districts shall be the public prosecutor therein. He shall attend the district courts held in his county or district, for the transaction of criminal business, and conduct, on behalf of the territory, all prosecutions for public offenses.

SEC. 2144. No prosecuting attorney shall be employed in, or allowed to conduct any suit for divorce, on the part of the petitioner or applicant in the courts of this territory, nor shall any prosecuting attorney be allowed to resist a petition for a divorce in any case remaining undefended, if the attorney for the petitioner is a partner in the practice of law, or keeps his office with such prosecuting attorney; but in all such cases, the court, or judge before whom the case is to be heard, shall appoint an attorney to resist the petition, who shall be entitled to a fee of ten dollars, which shall be deducted and paid from the salary of the regular prosecuting attorney.

SEC. 2145. Whenever a petition for divorce remains undefended in his county or district, it shall be the duty of the prosecuting attorney of said county or district to resist such petition.

SEC. 2146. The prosecuting attorney, when not in attendance upon the district court, shall institute and prosecute proceedings before magistrates, for the arrest of persons charged with, or reasonably suspected of public offenses, when he has information that any such offense has been committed; and for that purpose shall attend upon the magistrates in cases of arrest when required by them. The prosecuting attorney shall also attend before, and give advice to the grand jury whenever cases are presented to them for their consideration, and shall draw all indictments when required by the grand jury. It shall be the duty of the prosecuting attorneys, created by this act, to carefully tax all cost bills in all criminal cases arising in their respective counties, and they shall take care that no useless witness fees are taxed as part of such cause, and that the officers authorized to execute process tax no other or greater fees than the fees allowed by law: *Provided*, That, if they are not present at the trial of any criminal cause, before any justice of the peace, and the cost bill in such last cause is lodged with the county commissioners for such payment, the said prosecuting attorney shall have the right to review and retax the same, and it is made his duty so to do, if the board of county commissioners deem the bill exorbitant or improperly taxed.

SEC. 2147. Each prosecuting attorney, elected under this act, shall receive a yearly salary of three hundred dollars, to be paid quarterly out of the territorial treasury, out of any funds in the treasury not otherwise appropriated, upon presentation to the territorial treasurer of the proper warrant therefor, which warrant shall be paid in its regular numerical order. He shall also receive the sum of one hundred dollars yearly, payable quarterly, where the population of his county or district is one thousand or less, and for any additional number of inhabitants above one thousand, at the rate of seventy-five dollars per thousand, and every fraction of one thousand over five hundred, to be paid by the county or district out of any money in the county treasury, not otherwise appropriated. He shall also be entitled to receive, for all amounts collected by him for the territory or for his county or district, ten per cent. on the amount collected, and he shall not receive any other compensation for his services except the fee in divorce cases, as provided by law.

### IN THE SECOND JUDICIAL DISTRICT.

SEC. 2148. The second judicial district be, and the same is hereby, divided into two prosecuting attorney districts; and each of said prosecuting attorney districts shall, at the general election in the year one thousand eight hundred and eighty-two, and every two years thereafter, elect one prosecuting attorney, who shall hold his office for two years, and until his successor is elected and qualified.

SEC. 2149. The counties of Yakima, Klickitat, Skamania, and Clarke, shall constitute the first prosecuting attorney district.

SEC. 2150. The counties of Cowlitz, Wahkiakum, Pacific, Chehalis, Mason, Thurston, and Lewis, shall constitute the second prosecuting attorney district.

SEC. 2151. The prosecuting attorneys in the second judicial district shall each receive a salary for prosecuting and defending criminal and civil actions, in which the territory, or any county in his district is a party, the sum of eight hundred dollars per annum, to be paid out of the territorial treasury, quarterly, out of any money not otherwise appropriated.

SEC. 2152. Each prosecuting attorney shall prosecute all civil and criminal actions, in which the territory, or any county in his district, may be a party; defend all suits brought against the territory, or any county within his district, and prosecute all forfeited bonds, recognizances, and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the territory, or any county in his district.

SEC. 2153. No prosecuting attorney shall be allowed to conduct any suit for a divorce, on the part of the petitioner, or applicant in the courts of this territory, nor shall any partner in the practice of the law, or attorney having his office with any prosecuting attorney of this territory, be allowed to prosecute any suit in behalf of the petitioner, or applicant for a divorce, in the courts of this territory.

SEC. 2154. It shall be the duty of each prosecuting attorney to resist all petitions for divorce in his district, but no such petition shall be heard by the court, nor shall the prosecuting attorney be required to appear and defend the same, until the sum of fifteen dollars be deposited by the plaintiff in such petition, with the clerk of the court, as the fee of such prosecuting attorney, which the prosecuting attorney shall receive in addition to his salary. The provisions of this section shall apply to all prosecuting attorneys in the territory.

### IN THE THIRD JUDICIAL DISTRICT.

SEC. 2155. At the next general election, and every two years thereafter, there shall be elected by the qualified voters of the third judicial district of this territory, one prosecuting attorney, who shall be a practicing attorney-at-law, and have the qualifications of an elector, and shall reside in and be an inhabitant of the district.

SEC. 2156. Whenever a petition for divorce remains undefended, it shall be the duty of the prosecuting attorney to resist such petition; but no such petition shall be heard by the court, nor shall said prosecuting attorney be required to appear and defend the same, until the sum of fifteen dollars be deposited by the plaintiff in such petition with the clerk of the court, as the fee of such prosecuting attorney.

Sec. 2157. The prosecuting attorney shall not be employed in, or allowed to conduct any suit for a divorce on the part of the petitioner or applicant, in the courts of this territory nor shall be allowed to resist a petition for a divorce in any case remaining undefended, if the attorney for the petitioner is a partner in the practice of law or keeps his office with such prosecuting attorney; but in all such cases the court, or judge before whom the case is to be heard, shall appoint an attorney to resist the petition, who shall be entitled to the compensation allowed by law to prosecuting attorneys in such cases.

Sec. 2158. The prosecuting attorney shall receive a salary for his services in prosecuting and defending criminal and civil actions in which the territory is a party at the rate of fifteen hundred dollars per annum, to be paid out of the territorial treasury quarterly, out of any funds in the treasury not otherwise appropriated, upon the presentation to the territorial treasurer of the proper warrant therefor, which warrant shall be paid in its regular numerical order.

Sec. 2159. The prosecuting attorney shall receive for his services in prosecuting and defending civil actions for any county within his district and for legal advice to boards of county commissioners and county and precinct officers and for such other duties as may be required in sections 2170 and 2171; and any other duties imposed by law, the following sums annually to be paid out of the county treasury of such county within his district on the order of the board of county commissioners of any such county, that is to say: In counties where the population is one thousand, or less, the sum of fifty dollars; and for any additional number of inhabitants, above one thousand, at the rate of twenty-five dollars per thousand, out of any money in the general fund of the county not otherwise appropriated. No other or greater fees, or salary than herein provided shall be allowed or paid to any prosecuting attorney of this territory.

### PROVISONS APPLICABLE TO ALL THE DISTRICTS.

Sec. 2160. Each prosecuting attorney shall continue in office for the term of two years from and after the second Monday of January after his election, and until his successor is elected and qualified.

Sec. 2161. The prosecuting attorneys heretofore elected and now exercising the duties of the office as prosecuting attorney shall continue in office, until the second Monday in January, one thousand eight hundred and eighty-three, and until their successors are elected and qualified.

Sec. 2162. The county auditors, of the said several counties, shall make out under their hand and the seal of their office, a certificate showing the number of votes given in their respective counties, for each person for prosecuting attorney, and transmit the same to the secretary of the territory, and said votes shall be canvassed by said secretary, and he shall issue a certificate [of election] to the person receiving the highest number of votes in each of said counties or district, and the person so receiving the highest number of votes in said counties or district, shall be the prosecuting attorney of said county or district, and he shall be commissioned by the governor. The county auditor shall transmit the certificate of the votes herein required, to said secretary within four weeks after said election.

SEC. 2163. Every prosecuting attorney, before entering upon the duties of his office, shall take and subscribe an oath faithfully to discharge the duties of his office as prosecuting attorney for the county or district for which he was elected; such oath shall be in writing, certified by an officer authorized to administer oaths, and it shall be filed in the office of the secretary of the territory, and, moreover, said prosecuting attorney shall give the territory of Washington a bond in the sum of two thousand dollars, with good and sufficient surety, conditioned that he will faithfully discharge the duties of his office according to law, which bond shall be approved by the judge of the district for which he was elected and filed in the office of the secretary of this territory with said oath of office.

SEC. 2164. No prosecuting attorney shall receive any fee or reward from any person or persons, on behalf of any prosecution for any of his official services, except as provided in this chapter, nor shall he be engaged as counsel for a party in any civil action depending upon the same facts as a criminal prosecution.

SEC. 2165. Each prosecuting attorney of said counties or district shall, on the thirty-first day of December in each year, make the governor of the territory a report, setting forth the amount and the nature of business transacted by him in that year, with such other statements and suggestions as he may deem useful.

SEC. 2166. When any prosecuting attorney fails, from sickness, or other cause, to attend a term of the district court of the county for which he was elected, or is unable to perform his duties at such term, the court or judge may appoint some qualified person to discharge the duties for such term; and the person so appointed shall receive a compensation to be fixed by the court, to be deducted out of the territorial salary of such prosecuting attorney.

SEC. 2167. When a vacancy occurs in the office of the prosecuting attorney in any of said counties or districts it shall be the duty of the governor to appoint some qualified person to discharge the duties of the office until the next general election for delegate to congress, and until another prosecuting attorney shall be elected and qualified: *Provided*, That the person so appointed shall be duly qualified as provided in section twenty-one hundred and forty-one.

SEC. 2168. Each prosecuting attorney shall, when required by the board of county commissioners of his county or district or by the president of such board, give to such board of county commissioners, in writing, if so required, his legal opinion touching any subject which such board of county commissioners may be called or required to act upon, relating to the management of county affairs.

SEC. 2169. Each prosecuting attorney is hereby required to give legal advice, when requested, to all county and precinct officers and directors and superintendents of common schools in his county or district, in all matters relating to their official business; and when so required he shall draw up in writing all contracts, obligations and like instruments of an official nature for the use of said officers.

### PROVISIONS APPLICABLE ONLY TO THE FIRST AND THIRD DISTRICTS.

SEC. 2170. It shall be the duty of the prosecuting attorney to visit once in year the offices of the county auditor of his county or district, and he shall then examine the official bonds of all county and precinct officers on file in such office, and it is made his duty to report to the board of county commissioners any defect in the bonds of any public officer in such county or district. He shall also, once in each year, examine the public records and books of the auditor, assessor, treasurer, superintendent of common schools, and sheriff of his county, or district, and report to the board of commissioners of his county or district, any failure, refusal, omission or neglect of such officers to keep such records and books as required by law. He shall also report to the grand jury, having been selected from his county or district, any failure, refusal, omission or neglect of any auditor, treasurer, assessor, superintendent of common schools, or sheriff, to keep the records and books required by law.

SEC. 2171. Each prosecuting attorney shall be the legal adviser of the board of county commissioners of his county or district; he shall also prosecute all criminal and civil actions, in which the territory is a party, the jurisdiction of the action being in his county or district, or in which his county or district is a party; defend all suits brought against the territory, the jurisdiction of which is in his county or district; and all suits brought against the county or district in which he was elected. He shall prosecute all forfeited recognizance, bond and action for the recovery of debts, fines, penalties and forfeitures accruing to the territory, the jurisdiction of which is in his county or district or accruing to the county or district in which he is elected.

### PROVISIONS APPLICABLE ONLY TO THE SECOND AND THIRD JUDICIAL DISTRICTS.

SEC. 2172. The prosecuting attorney of any district, from which an appeal or writ of error is taken to the supreme court shall appear on behalf of the territory or the county in the supreme court in any case in which the territory, or any county in his district is interested, and prosecute or defend the same, as the case may be.

## CHAPTER CLVII.

### EXPENSES OF JUDGES ATTENDING COURTS, WHERE NO UNITED STATES BUSINESS IS TRANSACTED.

SECTION
2173. Expenses of judges; how certified and paid.

SEC. 2173. That at the close, or within a reasonable time thereafter, of the terms of the district courts in this territory, at which no United States business can be transacted, the judge holding such courts shall make a certified statement of the expenses necessarily incurred by him in attending and holding said courts; and thereupon the territorial auditor shall audit the same, and he shall draw a warrant on the treasury of the territory for the amount of said expense, and the same shall be paid by the territorial treasurer out of any money in the territorial treasury not otherwise appropriated.

# CHAPTER CLVII.

## IN REGARD TO CLERK OF THE SUPREME AND DISTRICT COURTS AND PRESCRIBING CERTAIN DUTIES FOR SUCH CLERKS.

SECTION
2174. The supreme court to appoint.
2175. To take oath and give bond.
2176. To keep his office at the seat of government.
2177. Clerk of the district court to be appointed.
2177. Term of office and bond.
2178. County commissioners to provide an office.
2179. Books to be kept by the clerk, and his duties.

SECTION
2180. Clerk to file all papers.
2181. Responsible for the custody and delivery of all books and papers.
2182. Shall have power to administer oaths.
2183. Shall not practice as an attorney.
2184. Clerk authorized to take acknowledgments.
2185. To file duplicate copies of their appointment.

SEC. 2174. The supreme court, or the judges thereof, shall appoint a clerk who shall hold his office during the pleasure of such court.

SEC. 2175. Before entering upon the duties of his office, he shall take an oath of office and give bond in such a sum, with surety and condition, as the said court or judges thereot shall require, which bond shall be deposited with the secretary of the territory. The bond shall be to the territory of Washington, and any party aggrieved by the official acts or omissions of said clerk may have his action thereon.

SEC. 2176. The clerk shall keep his office at the seat of government, and shall keep it open at all seasonable hours, and shall keep such records and books as are prescribed by law and the supreme court.

SEC. 2177. There shall be appointed by the district court, or the judge thereof in each county in this territory in which a term of the district court is appointed to be held, a clerk, who shall also be register in chancery, who shall take an oath of office, and shall give bond in such a sum as shall be prescribed by law and the court or judge appointing him. He shall hold his office during the pleasure of the court appointing him. His bond shall be filed with the auditor of the county, and any person aggrieved by his official actions or omissions may sue thereon.

SEC. 2178. The county commissioners of each county shall provide an office at the county seat of the county, or make reasonable allowance therefor, until suitable county buildings are erected, where said clerk in person, or by his deputy, shall attend at all times during the session of the court, and at reasonable times and on seasonable notice shall be present during vacation.

SEC. 2179. He shall, at the expense of the county, provide and keep a book, in which he shall enter all appearances and the time of filing all pleadings in any cause pending in said court. He shall also keep a docket, in which he shall enter, before every term, the titles of all causes pending before said court at such term, in the order in which they were commenced, beginning with criminal cases, noting in separate columns the names of the attorneys—the character of the action—the pleadings upon which it stands at the commencement of the term, leaving a margin opposite each case for the court to enter a short minute of the orders of the term. One copy of this docket he shall furnish for the use of the court, and another for the use of the members of the bar. He shall also provide and keep at each term, a minute book, in which he shall enter the names of witnesses and jurors with time of attendance, distance of travel, and whatever else is necessary to enable him to make out a complete cost bill. He shall also provide and keep a well bound book, to be called the order book or journal, in which he shall record the daily proceedings of the court, and enter all verdicts, orders, judgments and decisions thereof, from which every morning shall be read in open court, the proceedings of the previous day, which shall be signed by the judge; but the court shall have full control of all entries in said journal at any time during the same term in which they were made. He shall also provide and keep well bound books, one for an execution docket, one for a book of levies, and one for a final record, in which he shall make a full and perfect record of all criminal cases in which a final judgment is rendered, and all civil cases in which by any order or final judgment the title to real estate, or any interest therein, is any way affected, and such other final judgments, orders or decisions as either party may require, and may pay him for recording. He shall also provide and keep such other books as are prescribed by law, and required in the discharge of the duties of his office.

SEC. 2180. He shall file all papers that may be legally lodged with him for that purpose, noting the day, month and year, when so filed.

SEC. 2181. He shall be responsible for the safe custody and delivery to his successor of all books and papers belonging to his office.

SEC. 2182. He shall have power to administer oaths in every case where an oath is authorized by law.

SEC. 2183. He shall not practice as an attorney or counsellor within the county where he resides, and for which he is clerk, nor shall he be surety or bail in any case in the court of which he is clerk.

SEC. 2184. The clerks of the district or supreme courts of this territory, are authorized to take acknowledgments of deeds and instruments of writing under the seals of their office.

SEC. 2185. The clerks of the district courts of the territory of Washington and their deputies shall file a duplicate copy of their appointment with the secretary of the territory, within sixty days from and after their appointment.

## CHAPTER CLIX.

### QUARANTINE OF VESSELS.

SECTION
2186. Board of health Puget Sound district and duties
2186. Health officer of; bond and qualifications.
2187. Residence and duties of health officer in quarantine of vessels.
2188. Board of health may seize goods to purify.
2189. Penalty for refusal to obey board of health.
2190. Sick and infected persons may be quarantined on shore.
2191. Penalty for violating preceding sections.
2192. Penalty for person without permission going on quarantined vessels or premises.
2193. Vessels or places quarantined to be designated by flags; regulations as to flags
2194. Penalty for vessel or officer of, violating quarantine.
2195. Penalty for failure to remove vessel to place of quarantine.
2196. Officers of vessels to report to health officer; penalty.
2197. Pest house may be procured; appropriation for maintenance
2198. Fees of health officer.
2199. Quarantine regulations to be published.
2200. Fines to be paid into territorial treasury.

SEC. 2186. There shall be appointed by the governor, by and with the advice and consent of the council, three persons, residents of the port of entry, who shall be a board of health for collection district of Puget sound, whose duty it shall be to make such regulations respecting the quarantine of ships or vessels, prescribing in what cases it shall be performed by vessels arriving at any ports in this district, as may be deemed just and reasonable, and the same modify or change as in their opinion the public safety may require; and the board of health so appointed shall appoint a health officer who shall before entering upon the duties of his office give bonds with good and sufficient sureties to the territory of Washington, in the sum of twenty-five hundred dollars, conditioned for the faithful performance of his duty as such health officer, and shall be sworn before some officer qualified to administer oaths to perform the duties of his office to the best of his ability, and which bond and oath shall be filed in the office of the territorial secretary.

Sec. 2187. The health officer shall reside at the port of entry and shall require all vessels having on board any person or persons infected with small-pox, plague, pestilential or malignant fever, or other malignant, infectious, or contagious disease, or who shall have been so infected during the voyage, or having on board any goods reasonably supposed to have any infection of such disease, to perform quarantine at some safe, suitable and convenient place selected and designated for that purpose by the board of health, and order the master or other person having charge or control of such vessel to proceed with such vessel and anchor at such designated place, there to remain and be purified and cleansed, as he may direct, and a suitable place on shore may be prescribed and properly limited for the landing, care, treatment and purification of any persons or passengers of such vessel.

Sec. 2188. The board of health may, and it shall be their duty to seize any goods landed from any such infected vessel without the permission of the health officer, and remove and keep the same till they shall have caused them, the said goods, to be thoroughly cleansed, and purified, and which cleansing and purification shall be performed by or under the direction of the health officer with all possible dispatch, at which time such goods shall be turned over to the care and custody of the person properly claiming the same, upon the payment by the person so claiming, the expense of such removal and purification; and upon the failure of the health officer to turn over to such person any such goods agreeable to the provisions of this section, he shall be liable for all the damages that may arise from such failure, and which may be recovered by suit in any court of competent jurisdiction, together with costs of suit.

Sec. 2189. Any owner, master, supercargo, officer, seaman, consignee, or any other person who shall refuse or neglect to obey the orders and regulations of the board of health, in regard to such quarantine, or the purification and cleansing of such vessel, he shall be punished by fine not exceeding one thousand dollars or by imprisonment not exceeding three months, or both.

Sec. 2190. Any person sick on board any such vessel may be sent on shore by said health officer, at some place appointed and limited for that purpose, and shall there be maintained, provided for and cleansed, by or under the direction of the health officer, at the expense of such sick or infected person if able; otherwise at the expense of the vessel in which the person or persons may have been brought into any of the ports or waters of this district.

Sec. 2191. If any person shall come on shore from any vessel infected or justly suspected of being so, subject to or performing quarantine, or shall leave the place appointed for the sick, or for purification, being placed there, or employed or placed there by the health officer, without permission of said officer, he or she shall be fined not exceeding one thousand dollars, or imprisoned not exeeding three months, or both.

Sec. 2192. If any person shall, without permission of the health officer, go on board any vessel ordered for or performing quarantine, or go within the limits appointed by the health officer for the reception of infected persons and property on shore, he or she shall be considered as infected, and shall be held to undergo purification in the same manner and under the same regulations and penalties as those who are performing quarantine, and shall remain there at his or her expense until discharged by the health officer, and any person coming into any such place, having been previously designated as a place for infected persons or property or go on board any vessel ordered to or performing quarantine, and having at the time the lawful flag, as hereinafter described, hoisted at the mast head, without permission of the health officer, he may be forcibly detained by the person or persons there employed by the health officer, till he shall have undergone purification in the same manner and under the same regulations as those performing quarantine.

Sec. 2193. A red flag, at least six feet long and four feet wide, shall be hoisted from sunrise to sunset at the main truck of any and all vessels ordered for and performing quarantine, failing in which the vessel shall be liable to a fine of five hundred dollars: *Provided*, The master or other person, having the care and custody of any such vessel, shall first be notified of such regulations and have sufficient time and opportunity to procure said flag. A flag as hereinbefore described shall also be conspicuously displayed at the place designated by the board of health for the reception of infected persons and property on shore, in default of which the officer or officers having the control of such infected places shall forfeit his appointment and shall also be liable to a fine of fifty dollars, to be recovered before any justice of the peace, by any person suing for the same.

Sec. 2194. If any owner, master, supercargo, officer, seaman, or consignee of any vessel, or any other person knowing such vessel to be subject to quarantine. shall bring, or suffer the same to be brought to or near any wharf, store, dwelling house or other building not used for the purposes of the health officer in his official capacity as such, or shall make any false declaration as to the port or place from which such vessel came, or in regard to the condition and health of any person on board any such vessel, or shall cause, aid or permit the landing of any person or property of any nature or kind whatever, from such vessel, without the permission of the health officer, he shall be punished by fine not exceeding five thousand dollars, or imprisonment not exceeding three months or both.

Sec. 2195. If any such vessel shall not be removed to the place of quarantine agreeably to the directions of the health officer, or shall be brought near any wharf, store, dwelling house or other building without his permission, the health officer shall cause such vessel to be forthwith removed to such place, there to remain at the risk of the owners, till the expiration of the time limited by the health officer, and the expense of removal shall be paid by the master, owner or consignee, who shall severally be liable therefor, and may be recovered by the board of health, together with costs of suit, in any court having jurisdiction.

Sec. 2196. The master of every vessel arriving at any port in the collection district of Puget sound, having on board any person or persons infected with plague, small-pox, or other malignant, infectious or pestilential disease, or who have been so infected during the voyage, or having on board any goods which may reasonably be supposed to have any infection of such disease, shall forthwith give notice thereof to the health officer; and if any such master or other person, having charge of such vessel, shall neglect to give such notice, he shall be fined not exceeding five thousand dollars or may be imprisoned not exceeding six months or both.

Sec. 2197. It shall be the duty of the board of health, appointed under the provisions of this chapter, when by them deemed necessary, to procure a suitable building, either by lease or construction, to be used exclusively by the health officer as a pest house, and to approve all necessary expenses of said health officer, in procuring a building and keeping the same in proper repair and obtaining necessary furniture therefor, and in carrying into effect the provisions of this chapter, and a sum not to exceed two hundred dollars in any one year, after approval thereof by the board of health, shall be appropriated and paid out of the territorial treasury from any money therein for the payment of such necessary expenses.

Sec. 2198. That the fees of the health officer shall be fixed by the board of health but shall not exceed the sum of five dollars for boarding and examining a vessel in the day time, or ten dollars in the night time between the hours of 10 p. m. and 5 a. m., nor the sum of fifteen dollars for fumigating any vessel, by said health officer, which fee shall be paid by the vessel boarded, examined and fumigated and shall be a lien on such vessel until paid, and no vessel shall receive a bill of health or clearance until all quarantine fees are paid, which fee may be recovered by the health officer together with costs of suit in any court having jurisdiction.

Sec. 2199. The board of health shall give notice in such manner as they may think reasonable, and most for the public good, of any and all regulations made by them under the provisions of this chapter, the expense or cost of which shall be paid out of the territorial treasury, and the territorial auditor is hereby authorized to draw his warrant on the territorial treasurer for the same, upon the presentation of a bill for such cost of giving notices as provided for in this section, and which bill shall first be countersigned by the collector of customs, or his deputy, and which countersigning shall be *prima facie* evidence of its correctness.

Sec. 2200. All fines recovered under the provisions of this chapter and not otherwise provided for, shall be paid into the territorial treasury.

## CHAPTER CLX.

### TO PREVENT SPREAD OF CONTAGIOUS DISEASES.

Section
2201. Board of county commissioners constituted a board of health.
2202. Powers conferred to prevent spread of contagious diseases.

Section
2203. Penalty for non-compliance with requirements of commissioners.
2203. Appropriations for health regulations.

Sec. 2201. The county commissioners of each and every county in this territory shall be constituted a board of health. Whenever it is considered necessary by said board of commissioners for the prevention of the spread of contagious diseases, it shall be their duty to use all necessary means therefor. They shall have power to restrain travel, to isolate infected and diseased persons, to employ physicians and nurses when by them deemed necessary for the safety of the people of their respective counties.

SEC. 2202. Any person or persons refusing to comply with the requirements of said commissioners in the duties imposed on them by this chapter shall be guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be fined in any sum not exceeding one hundred dollars, or imprisoned not to exceed thirty days.

SEC. 2203. The commissioners of each county shall appropriate all necessary funds, out of any moneys not otherwise appropriated, in their respective counties for the enforcement of this chapter.

## CHAPTER CLXI.

### PREVENTION OF SPREAD OF CONTAGIOUS DISEASES IN CITIES AND TOWNS.

SECTION
2204. Infected persons may be quarantined.
2205. Persons coming from infected place to give notice.
2206. Such person may be restricted to prescribed limits; penalty for disobedience.
2207. Officers may be appointed to examine travelers coming from infected places.
2208. Examination of baggage, etc, suspected to be infected
2209. Officers may store or seize infected goods.
2210. Officers may break open any house or shop, when.
2211. Charges incurred in preceding section payable by owner.
2212. Parties injured to be compensated.
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SECTION
2215. Order of removal to be filed with the clerk.
2216. Election of health committees; health officer and powers.
2217 Municipal officers ex-officio health committee.
2218. Owners or occupants of property must remove filth, etc.
2219. Officers of vessels, etc., to answer health officers; penalty.
2220. Quarantine of vessels and infected persons.
2221. Penalty for violating preceding section.
2222. Health officer may quarantine vessel.
2223. Notice of quarantine to be given by pilots.
2224. Quarantine of vessels and penalties prescribed.
2225. Quarantine flags to be procured.
2226. Health officers and committees invested with powers of municipal officers.
2227. Expenses of quarantine by whom paid.

SEC. 2204. When any person is or has recently been infected with any disease or sickness dangerous to the public health, the municipal officers of the town or city where he or she is shall provide for the safety of the inhabitants as they think best, by removing him or her to a separate house if it can be done without great danger to his or her health, and by providing nurses and other assistants, and necessaries, at his or her charge, or that of his or her parent or master, if able; otherwise, that of the town or city to which he or she belongs.

SEC. 2205. When any infectious or malignant disease is known to exist in any place out of the territory, the municipal officers of any town or city in the territory by giving public notice therein as they find convenient, may require any person coming from such place, to inform one of them or the town or city clerk of their arrival and from what place, and if he or she does not within two hours after his or her arrival, or after actual notice of such requirement, give such information, he or she shall forfeit one hundred dollars to the use of the town or city.

SEC. 2206. Said officers may prohibit a person required to give such information from going to any part of their town where they may think his presence would be unsafe for the inhabitants, and if he does not comply, they may order him, unless disabled by sickness, forthwith to leave the town or city in the manner and by the road they may direct; and if he neglects or refuses so to do, any justice of any town or city, on complaint of either of said officers, may issue a warrant to any proper officer or other person named therein and cause him to be removed out of the territory; and if, during the prevalence of such disease in the place where he resides, he returns to any town or city in this territory, without the permission of the municipal officers thereof, he shall forfeit not exceeding one hundred dollars; and if said forfeiture is not paid he shall be imprisoned not less than three months nor more than six months.

Sec. 2207. The municipal officers of any town or city near to or adjoining the line of this territory, may appoint by writing under their hands, suitable persons to attend at any places by which travelers may pass into such town or city from infected places in other states, territories and provinces, who may examine such passengers as they suspect of bringing with them any infection dangerous to the public health, and if need be, may restrain them from traveling until licensed thereto by a justice of the peace in the town or city, or one of said officers, and any such passenger who without such license, travels in this territory except to return by the most direct way to the state, territory or province whence he came, after he has been cautioned to depart by the persons so appointed, shall forfeit one hundred dollars or be imprisoned three months.

Sec. 2208. When, on the application of the municipal officers of any town or city, it appears to any justice of the peace that there is just cause to suspect that any baggage, clothing or goods of any kind within such town or city are infected with any malignant, contagious disease, by a warrant directed to a proper officer, he shall require him to impress so many men as the justice thinks necessary to secure such infected articles, and to post said men as a guard over the house or place where the articles are lodged, who shall prevent any person removing or coming near such articles, until due inquiry is made into the circumstances thereof.

Sec. 2209. He may by the same warrant, if it appears to him necessary, require said officers under the direction of the municipal officers, to impress and take up convenient houses or other buildings for the safe keeping of such infected articles, and cause them to be removed thereto or otherwise detained, until municipal officers think they are free from infection.

Sec. 2210. Said officers, if need be, may break open any house, shop or other place mentioned in the warrant where infected articles are, and require such aid as is necessary to execute it, and all persons at the command of either of said officers shall assist in such execution under a penalty for refusal, of not exceeding ten dollars.

Sec. 2211. The charges of securing such infected articles and of transporting and purifying them, shall be paid by the owners thereof at the price determined by the municipal officers.

Sec. 2212. When the officer impresses or takes up any house or other building or other necessaries, or impresses any man as herein provided, the parties interested shall have just compensation therefor, to be paid by the town or city in which such persons or property were impressed.

Sec. 2213. When a malignant infectious disease prevails in any town or city wherein the supreme or judicial court is to be held, said courts may be adjourned and may be held in any town or city in said county, by proclamation made in such public manner as the courts judge best, as near their usual place of meeting as they think safety permits.

Sec. 2214. When any person in any jail or prison or work house in this territory, is attacked with any disease which the municipal officers of his town upon medical advice consider dangerous to the safety and health of other prisoners, or of the inhabitants of the town or city, they shall, by their order in writing, direct his removal to some place of safety, there to be securely kept and provided for until their further order; and if he recovers from such disease, he shall be returned to his place of confinement.

SEC. 2215. If he was committed by order of a court or under a judicial process, the order for his removal, or a copy thereof attested by the municipal officers, shall be returned by them with the doings thereon, into the office of the clerk of the court from which such order or process was issued. No such removal shall be deemed an escape.

SEC. 2216. A town or city may, at its annual meeting, choose or elect a health committee, of not less than three nor more than five, or one person to be a health officer who shall remove, at the expense of their town or city all filth found in any place therein, which, in their judgment endangers the lives or health of any inhabitant, and require the owner or occupant, when they think necessary, to remove or discontinue any drain or other source of filth.

SEC. 2217. If any town or city, at its annual election, omits to choose or elect such committee or officer, the municipal officers shall be a health committee and have all their powers and perform all their duties.

SEC. 2218. When any source of filth, or other cause of sickness is found on private property, the owners or occupant thereof shall, within twenty-four hours after notice from the said committee or officers, at his own expense, remove or discontinue it; and if he neglects or unreasonably delays to do so, he shall forfeit not exceeding fifty dollars; and said committee or officers shall cause said nuisance to be removed or discontinued, and all expenses shall be repaid to the town or city by such owner or occupant, or by the person who caused or permitted it.

SEC. 2219. If any master, seaman, or passenger of any vessel, or steamer, in which there is any infection, or has lately been, or is suspected to have been, or which has come from a port where any infectious disease prevails, dangerous to the public health, refuses to answer, on oath, such questions as are asked him relating to such infection or disease, by the municipal or health officer of the town or city to which such vessel comes, which oath, either of said officers may administer, he shall forfeit not exceeding two hundred dollars, or be imprisoned not more than six months.

SEC. 2220. When a vessel or steamer arrives at any seaport in this territory, having on board any person infected with any malignant disease, the master, commander, or pilot thereof shall anchor it at some convenient place below the town or city of such seaport, at a distance safe for the inhabitants thereof and the persons on board other vessels or steamers in the port; and no person or thing on board shall be brought on shore until the municipal or health officers give them written permit so to do.

SEC. 2221. For the willful violation of the provisions of the preceding section, such master or commander shall forfeit not exceeding two hundred dollars, and the pilot not exceeding fifty dollars for such offense.

SEC. 2222. The municipal or health officers of any seaport town or city may cause any vessel or steamer arriving there, to perform quarantine at such place and under such regulations as they may judge expedient when they think the safety of the inhabitants requires it; and whoever neglects or refuses to obey such orders and regulations, shall forfeit not exceeding five hundred dollars or be imprisoned not exceeding six months.

Sec. 2223. When such officers of a seaport, town or city, think it necessary to order all vessels or steamers, arriving there from any particular port or ports, to perform quarantine, they shall give notice thereof to the pilots of their port, who shall make it known to the master or commander of all vessels or steamers which they board. If any pilot neglects to do so, or contrary thereto, pilots any vessel or steamer up to said seaport, town or city, he shall forfeit not exceeding one hundred dollars.

Sec. 2224. When the master or commander of any vessel or steamer takes either of them up to any seaport, town or city, after notice that a quarantine has been so directed for all vessels or steamers coming from the port or place whence his vessel or steamer sailed, or by false declaration, or otherwise, fraudulently attempts to elude such directions, or lands or suffers to be landed from his vessel or steamer any person or thing without permission of the municipal or health officer, he shall be punished as provided in section 2221.

Sec. 2225. The municipal or health officer of any seaport, town or city requiring vessels or steamers to perform quarantine shall provide, at the expense of such town or city, a suitable number of red flags, at least three yards in length; and the master or commander of every vessel or steamer ordered to perform quarantine shall cause one of them to be continually kept, during the term thereof, at the head of the mainmast of his vessel or steamer, and no person shall go on board such vessel or steamer during said term unless by permission of said officers. If he does, he shall be thereafter held liable to the same regulations and restrictions as those belonging to said vessel or steamer, and shall there be detained by force if necessary, until duly discharged by said officers.

Sec. 2226. In every seaport town or city where there is a health committee or health officer, he or they may perform all the duties and exercise all the authority of municipal officers in requiring vessels or steamers to perform quarantine.

Sec. 2227. All the expenses incurred on account of any person, vessel, or steamer or goods under quarantine regulations, shall be paid by him or the owner of the vessel or steamer, or goods, as the case may be.

## CHAPTER CLXII.

### PREVENTION OR SPREAD OF CONTAGION AMONG SHEEP.

Section
2228. Sheep commissioners to be elected; qualifications and duties.
2229. Sheep not to be imported until certified as sound.
2229. In moving sheep, traveling permit required.
2230. Duty of owner of infected sheep.
2231. Inspector may quarantine infected bands, penalty.

Section
2232. Fees of inspector.
2233. Penalty for violating this chapter.
2234. Liability of parties defined; procedure.
2235. Justices of the peace have concurrent jurisdiction.
2236. Sheep shall not be ferried into any county until certificate of inspector is obtained.
2237. Disposition of fines; counties excepted.

Sec. 2228. There shall be elected in each county, at each regular election in the territory of Washington, a qualified elector, who shall be known as a sheep commissioner, who shall, before entering upon the duties of his office, subscribe an oath and enter into bond, with two or more sufficient sureties, to be approved by the county commissioners, conditioned for the faithful performance of the duties of his office. Each inspector shall have power to appoint deputies, not exceeding one for each precint, for whose acts he shall be responsible, and by any of whom he may perform any act required of him by this chapter. It shall be the duty of the inspector of sheep, at any time, upon the written request of one or more citizens of his county owning or having possession of sheep, that sheep owned by or in possession of any other person is affected with scabs or scabies, and that such owner or other person has heen notified of the fact, and fails to take proper steps to cure such diseased sheep, it shall be the duty of the inspector, without delay, to examine said sheep, and if he shall find said sheep to be affected with said disease, he shall within thirty days take said sheep into his possession, and cure them or cause them to be cured. He may call to his assistance such aid as may be necessary for that purpose, and the owner or owners of said sheep shall be liable to said sheep inspector for all necessary expenses, costs and charges incurred in curing the sheep, including the compensation of two dollars and fifty cents per day to such inspector for every day or part of a day in which he shall be necessarily employed, together with the expenses of traveling to and from such place: *Provided*, That if the complaint shall be false, the party complaining shall be liable to the sheep inspector for his compensation of two dollars and fifty cents per day, for every day or part of a day employed in the examination of said sheep, and expenses of traveling as aforesaid. The indebtedness incurred under the provisions of this chapter may be recovered by such sheep inspector in his official character, by an action in any court having jurisdiction of the amount.

Sec. 2229. Any person, company or corporation intending to bring or cause to be brought into the territory of Washington any sheep or bands of sheep, must first obtain from an inspector of scab, duly appointed under this chapter a certificate that said sheep or bands of sheep are sound and free from scab or scabies before crossing the boundary line of said territory; and any person, company or corporation desiring to move his or their sheep from one county to another, or from one section to another, shall secure from the sheep inspector of the county which he leaves or which he enters, a certificate of inspection and traveling permits duly signed, that such sheep are free from scab or all other infectious or contagious diseases, and any person willfully or negligently violating the provisions of this chapter, shall be guilty of misdemeanor, and on conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars.

Sec. 2230. Any person or persons, now or hereafter, having ownership of or in any sheep infected by scab or any other infectious disease, shall keep the same secure from contact with other sheep, and shall not be permitted to move or drive the same upon any highway, byway or across any range where other sheep are liable to range or be driven: *Provided*, That the owner or owners of such sheep, so infected, may move the same by first obtaining a written permission of the sheep commissioner of the county wherein he wishes to move them, which permission shall state the manner in which they are to be moved and the place to which they are to be moved, and the route designated: *Provided*, That the sheep commissioner shall not give permission to any person or persons to move any sheep so infected across any range where healthy sheep are accustomed to range. Any person or persons violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than two hundred and fifty, nor more than two thousand dollars.

Sec. 2231. Whenever, on any examination of any bands or herds of sheep kept or herded in any county in the territory of Washington, the sheep inspector shall find such sheep, or any portion of them, affected with scab, or any other infectious or contagious diseases, he shall forthwith notify the owner or person in charge of such diseased sheep, in writing, to put such diseased sheep, and the band or herd in which they have been kept, into an enclosure, or by other sufficient means be kept from contact with other sheep, and to proceed immediately to treat them for the cure of such disease, under his supervision; and any person, company or corporation who shall refuse or neglect to immediately put such sheep into an enclosure, or by other sufficient means secure them from contact with other sheep, or shall refuse or neglect for thirty days after such notice to proceed to treat such sheep for the cure of such disease, under the supervision of an inspector, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars, and no more than two hundred dollars; and for each day of such neglect or refusal to treat such sheep, after thirty days from such notice, such person or corporation shall be guilty of a separate misdemeaner, and, upon conviction thereof, shall be punished by a fine not less than twenty dollars nor more than fifty dollars, and in addition to the punishment provided in this section, the inspector shall, in case of a refusal or neglect to secure such diseased sheep from contact with other sheep, immediately upon notice being given as hereinbefore provided, or in case of refusal or neglect of fifty days after notice to treat such sheep for the cure of such disease, seize such sheep, and by enclosure or other sufficient means, secure them from contact with other sheep, and proceed without other unnecessary delay to treat them for the cure of such disease, and the expense of such seizure, keeping and treatment, together with the fees of the inspector while engaged therein, shall be charged on the sheep so seized, and the inspector shall hold the sheep until the same is paid; or if not paid within ten days after such treatment is completed he shall collect the same, together with the costs and expenses of collection, by advertising and selling such sheep, or so many thereof as may be necessary, in the manner provided by law for the sale of personal property upon execution: *Provided*, No person, company or corporation shall be required to dip a band of sheep from the first day of November until the first day of May of each year.

Sec. 2232. The per diem of the sheep inspector shall be as follows: For inspecting, granting certificates and traveling permit, three dollars, together with ten cents per mile necessarily traveled in making such inspection.

Sec. 2233. Any person, company or corporation violating any of the provisions of this chapter shall be liable in civil action for all damages sustained by any other person, company or corporation in consequence of such violation.

Sec. 2234. On any action or proceedings, civil or criminal, arising under this chapter, all persons having an interest in sheep, concerning which such action or proceeding is had, shall be deemed the owners of such sheep, and owners shall be liable, severally and jointly, for violation of this chapter. Any herder, shepherd or other persons in charge of sheep, who shall willfully refuse to give an inspector information as to the condition of sheep in his charge, shall be guilty of misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than twenty-five dollars nor more than two hundred and fifty dollars. In criminal actions against corporations, under this chapter, no arrests shall be necessary, but a summons, containing notice of the time and place of trial, together with a copy of the complaint filed before the justice of the peace or the clerk of the court in which the action is commenced, shall be served in the manner and for the same time as in civil actions.

Sec. 2235. Courts of justice of the peace shall have concurrent jurisdiction with the judicial court, of all misdemeanors defined in this chapter, and of all criminal prosecutions for such [mis] demeanor. The provisions of this chapter, requiring the inspectors of sheep to prosecute for violations of its provisions, shall not be so construed as to prevent such prosecutions from being commenced and prosecuted by other persons, as other criminal actions are commenced and prosecuted.

Sec. 2236. It shall not be lawful for any person, company or corporation to ferry or cause to be ferried any herd or band of sheep into any county or counties of this territory without first obtaining of the person or persons so desiring to pass over their herd or band of sheep a certificate from the county inspector, or his deputies; and any person, company or corporation violating this chapter shall be deemed guilty of misdemeanor, and fined not less than fifty dollars nor more than five hundred dollars, to be collected as provided for in this chapter.

Sec. 2237. All fines and penalties arising from the provisions of this chapter shall one half go to the general school fund of the county in which the action is brought, and the other half go to the county fund: *Provided*, This chapter shall not apply to the counties of Pierce, Thurston, Chehalis, Cowlitz, San Juan and King.

## CHAPTER CLXIII.

### TO PREVENT SPREAD OF CHINESE AND CANADA THISTLES.

SECTION
2238. Suffering of same to go to seed, a misdemeanor, penalty.
SECTION
2239. Road supervisors to cause same to be destroyed; penalty, certain counties excepted.

Sec. 2238. That if any person or persons owning, possessing or having care or charge of any land or lands, improved or unimproved, enclosed or unenclosed, in this territory, shall knowingly, willfully, or willingly permit or suffer any Chinese or Canada thistles to grow up thereon and suffer the same to stand until its seeds get ripe, such person or persons shall be guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined in the sum of ten dollars and for the second offense not less than twenty-five nor more than fifty dollars, to be recovered with costs in any action to be brought in the name of the territory of Washington, for the use and benefit of the public school fund in the county where the offense is committed; or action therefor may be brought before any court of competent jurisdiction in the county.

SEC. 2239. It shall be the duty of each supervisor of roads in each road district under the same penalties, for non-compliance as prescribed in preceding section, to call out a sufficient number of laborers to cut down and destroy any Chinese or Canada thistles, found growing in the public highways in his road district; said supervisor to have said thistles cut down and destroyed before the seed shall have matured and said supervisor shall credit each and every person or laborer so called out with the amount of labor so performed at the rate of two (2) dollars per day on his road tax: *Provided*, That the counties of Cowlitz, Skamania, Pacific, Clarke and Wahkiakum shall not be included in the provisions of this chapter.

## CHAPTER CLXIV.

### ELK.

SECTION
2240. Unlawful to kill elk from 1st of February to 1st of August.
SECTION
2341. Penalty prescribed for violating provisions of this chapter.

SEC. 2240. It shall be unlawful for any person to kill elk within this territory from the first day of February until the first day of August in each year; or who at any time shall wantonly destroy any elk for their horns or hides.

SEC. 2241. Any person who shall willfully violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be fined twenty-five dollars for the first offense, and fifty dollars for every subsequent offense, which fine may be collected, on the information of any person, before any court having jurisdiction; half of which [fine] shall go to the county fund of the county, and the other half to the informant.

## CHAPTER CLXV.

### DEAF MUTES.

SECTION
2242. Indigent deaf mutes educated at expense of territory.
2243. Parent or guardian must make application to probate judge
2244. When probate judge gives certificate of admission to school.
SECTION
2245. Two hundred dollars appropriated for each deaf mute.
2246. General appropriation for, to lapse in case of cruel treatment

SEC. 2242. Any deaf mute, resident of this territory, over the age of eight years and under the age of twenty, whose parents or guardians are unable to pay for board and tuition in the institution known as the Oregon school for deaf mutes, may be admitted to the same at territorial expense in the manner following: The parent, guardian or next friend of such deaf mute shall appear before the probate judge of the county in which he is a resident and make a written application in form as follows:

To ——, probate judge of the county of ——, territory of Washington:

The undersigned respectfully represents that he is the —— of ——, a deaf mute, resident of said county, — years of age, and that he is unable to provide for the education of the same. Applicant therefore prays that a certificate be granted the said —— to enter the Oregon school for deaf mutes at the expense of the territory as by law provided.

Dated ——, 18—. Signed ——.

SEC. 2243. If the probate judge after reasonable inquiry shall find the facts to be as stated in the application, he shall issue to the person making the same a certificate in form as follows:

To the superintendent of the Oregon school for deaf mutes:

You are hereby authorized to admit — , a deaf mute resident of —

county, territory of Washington, to your institution for the period of — years from the date of this certificate.

———W. T., ———, 18—. ———, probate judge.

SEC. 2244. The probate judge shall file the parent's application in his office and transmit a certified copy of the certificate to the territorial auditor, who shall file the same in his office.

SEC. 2245. It shall be the duty of the territorial auditor at the close of each school year of the institution above named to draw his warrant on the treasury in favor of the proper officer of said institution for the sum of two hundred dollars per school year, or at that rate for the time that he or she attends said school, for each pupil admitted according to the forms of law: *Provided*, That no person shall enjoy the privilege herein granted for a period of more than three years.

SEC. 2246. The sum of one thousand and six hundred (1600) dollars is hereby appropriated, to carry out the provisions of this act: *Provided*, That a complaint may be made by parent, guardian or next friend of such indigent deaf mute to the probate judge committing the same, that said deaf mute has not received proper care and attention, sustained by proof; said probate judge may order said deaf mute to be withdrawn from said institution, and this appropriation shall not be used.

## CHAPTER CLXVI.

### HOSPITAL FOR THE INSANE.

SECTION
2247. How designated.
2248. Board of trustees, how constituted; tenure of office
2249. General powers of the trustees.
2250. Trustees must give bond to territory.
2251. Appointment and qualification of superintendent.
2252. Superintendent not required to attend court as a witness
2253. How accounts audited and paid.
2254. Personal expenses of trustees, how paid
2255. No trustee to be interested in any contract
2256. How accounts must be kept.
2257. Must make out report every two years.
2258 Books and accounts must be open to inspection of any tax payer.
2259. Who are *ex-officio* visitors to asylum.
2260 No person laboring under contagious disease admitted.

SECTION
2261. Indigent patients of the territory, preference for admission
2262. District courts may commit persons acquitted on account of insanity.
2263. Sheriff to convey patients to asylum
2264 When and how patients are discharged.
2265. No indigent patient to be disharged without clothing and money.
2266. Superintendent may employ assistants: salary.
2267. Superintendent shall ascertain history of each patient.
2268. Duty of retiring board of trustees.
2269. Power of trustees to make purchases.
2270. Material and improvements how purchased and made.
2271. All bills found correct must be certified by the president
2272. Appropriation for asylum.

SEC. 2247. That the territorial asylum for the insane and idiotic, situated near the town of Steilacoom, in the county of Pierce, shall be hereafter styled and known as "the hospital for the insane in Washington territory," and all statutes mentioning and referring to said asylum, heretofore enacted and not otherwise inconsistent with the provisions of this act, shall hereafter have the same operation as if they mentioned or referred to "the Washington hospital for the insane."

SEC 2248. That a board of three trustees shall be nominated by the governor, and with the consent of the legislative council, by him be appointed, who shall be known as "the trustees of the hospital for the insane in Washington territory." The said trustees shall hold office for two years from the second Monday in January, following date of appointment and until their successors are appointed and qualified, subject to removal for good and sufficient cause, by the governor, at any time. The board at their first meeting shall elect one of their number president and may appoint as secretary one of their number, or if they prefer, they may appoint any person not a member of the board as secretary. The secretary shall receive an annual salary of one hundred dollars. Should a vacancy occur in the board of trustees, the governor shall appoint to fill the vacancy for such unexpired term. If at any meeting the president be absent, the board shall choose from their number a president *pro tempore*. Two of the board shall constitute a quorum for the transaction of business.

Sec. 2249. Said board shall have power to make all necessary repairs and improvements as in their judgment may be necessary, for the conduct of said hospital and to hold, manage, dispose of and convey all real and personal property made over to them by gift, devise or bequest and the proceeds and increase thereof for the use of said hospital. Said board shall take charge of the general interests of the hospital and shall manage and conduct the same in such manner as may appear to them best and most economical. They shall employ a superintendent, and may ordain by-laws for the government of said hospital and therein may prescribe, in a manner consistent with the laws of the territory, the duties of all persons connected in any way with the management of said hospital. Said board shall furnish the territorial auditor with a certified copy of such by-laws as they may adopt, and of any and all changes therein which from time to time said board may make.

Sec. 2250. Each of said named trustees and their successors shall before entering upon the duties of his office give a bond of five thousand dollars, approved by the governor and filed in the office of the secretary of the territory, for the faithful performance of his duties.

Sec. 2251. The superintendent shall be a skillful practicing physician, and shall reside upon the hospital grounds. He shall hold his office for such time as the trustees may deem wise and for the efficiency and economy of the institution; he shall have entire control of the medical, moral, dietetic treatment of the patients, and, so far as is not inconsistent with the by-laws and regulations of the hospital, of all other internal government and economy of the institution and he shall, in such manner and under such restrictions and for such terms of time, as the by-laws may prescribe, appoint all subordinate employes, and shall have entire direction of them in their duties.

Sec. 2252. The superintendent shall not be required to attend any court as a witness in a civil suit, but parties desiring his testimony can take and use his deposition; nor shall he be required to attend as a witness in any criminal case, unless the judge of the court before which his testimony shall be desired, shall, upon being satisfied of the materiality of his testimony, require his attendance, and he and all other persons employed at the hospital shall be exempt from serving on juries, and in time of peace, from performing military duty.

Sec. 2253. The necessary expenditures of the trustees, the salary of employes and all other expenses incident to the conduct of the hospital, shall be examined by the trustees upon accounts rendered, and if approved by them, shall be so certified to the territorial auditor. The trustees shall, in the by-laws fix the days of their monthly visitations and shall at the hospital on those days, receive and examine all accounts presented to them and certify to the territorial auditor such as they approve.

SEC. 2254. The trustees shall each be paid his actual and necessary traveling expenses, in going and returning from the meeting of said board, and in performing the necessary visitation required by this act, and shall be reimbursed all other necessary expenditures incurred in discharge of their official duties, and shall receive three dollars per day for the time actually spent in the discharge of such duties.

SEC. 2255. No trustees shall be appointed or employed in any office under authority of the board except as provided in section 3147 of this act nor be directly or indirectly interested in any contract, debt or account to be made by said board for any purpose whatever.

SEC. 2256. The trustees shall cause the accounts of said institution to be so kept and reported as to show the quality, quantity, cost and vendor of every article purchased for use therein.

SEC. 2257. The trustees shall meet on, or within one month before the first day of meeting of the legislative assembly at every biennial session thereof, and shall then prepare and lay before the governor and said assembly, a full and detailed, but concise report, exhibiting a particular statement of the condition of the hospital and all its concerns, an account of all contracts, expenditures and liabilities, with a list of the salaried officers and their salaries, and in a tabular form the value of the stock and supplies on hand.

SEC. 2258. The accounts and books of the hospital shall at all times be open to inspection of the legal visitors of the institution, or any taxpayer of the territory.

SEC. 2259. The governor, justices of the supreme court and members of the legislature shall be *ex officio* visitors of the institution.

SEC. 2260. No person laboring under any contagious or infectious disease shall be admitted into said hospital as a patient.

SEC. 2261. In admitting patients to and retaining them in the hospital, the indigent insane of this territory shall always have precedence; and if at any time the provisions of the institution are not sufficient to meet the applications for admission, recent cases shall, for the time being, have precedence over those of a chronic character.

SEC. 2262. The district courts of the territory shall have power to commit to this institution any person, who, having been arraigned for an indictable offense, shall be found by the jury to be insane at the time of such arraignment, and the costs of such commitment shall be paid in the same manner as the costs of a commitment of an insane person out of a probate court.

SEC. 2263. In conveying patients to the hospital, the sheriff, with the approval of the judge of the probate or district court from which the warrant of commitment issues, may employ one assistant for each patient.

SEC. 2264. Any patient may be discharged from the hospital, when, in the judgment of the superintendent it may be expedient. Whenever a patient not cured, or any indigent patient shall be ordered discharged, the superintendent shall immediately give notice thereof to the probate judge of the county in which said patient resided, and if in the judgment of the superintendent, such patient so ordered to be discharged is in fit condition to be sent to his or her county, unattended by any person, the superintendent may return the patient to the county, from whence he or she came, if indigent, at the expense of the said county, but if such patient so ordered to be discharged from said hospital and care, without endangering the health of such patient, is through or by any reason unfit to be alone sent to the county from which he or she was committed to said hospital, the superintendent shall so certify to the probate judge of said county; who shall immediately, upon receipt of the notice, issue his warrant to the sheriff, commanding him to remove the patient and return him or her to the county from whence he or she came. If, within thirty days after the notice, the patient be not removed, the superintendent, if he think necessary, may return the patient to the county from which he or she came, at the expense of the county: *Provided*, That if any such patient is not in a condition to either go or be removed to said county, he or she may, for the time being, be retained in said hospital at the expense of the county from which he or she was so committed.

Sec. 2265. No pauper shall be discharged from the hospital without suitable clothing; and the trustees may furnish the same at their discretion, together with such sum of money not exceeding ten dollars as they may deem necessary. To carry into effect the provisions of this section, the board of trustees are hereby authorized and empowered to make requisitions on the territorial auditor for such sum or sums as from time to time they may need for the purpose mentioned herein, not exceeding however, the sum of two hundred dollars per annum and said territorial auditor on receipt of such requisitions signed by the president and secretary of said board shall issue the warrant on the territorial treasury for the amount thereof with the limitations prescribed herein.

Sec. 2266. The superintendent, by and with the consent of the board of trustees, may employ such assistants as are necessary for the effectual and economical management of the institution, and the regular officers shall not receive salaries to exceed the following sums: One superintendent, twenty-two hundred dollars per annum, ($2200); One accountant, thirteen hundred dollars per annum, ($1300); One head warden, six hundred and fifty dollars per annum, ($650); Four additional wardens, each five hundred and fifty dollars per annum, ($550); One additional warden, four hundred dollars per annum, ($400); Two matrons, to aggregate one thousand dollars per annum, ($1000); One assistant matron, three hundred dollars per annum, ($300); One laborer, four hundred dollars per annum, when required, ($400); One teamster, four hundred dollars per annum, when required, ($400); One carpenter, $650 per annum. All the officers and employes may be furnished subsistence, quarters, lights and fuel for one, with quarters for a family, in excess of salaries.

Sec. 2267. It shall be the duty of the superintendent to ascertain by diligent inquiry and correspondence the history of each and every patient admitted to the hospital, and whether such patients, or their friends or families, if any there be, are able to defray the expenses of his or her care, and report the facts to the board of trustees, who shall use efficient means for the collection of all sums due the institution, from those who are able to pay for such care.

Sec. 2268. The retiring board of trustees, and those constituting the board to be appointed during each session of the legislature, shall meet on the second Monday of January following, when it shall be the duty of the retiring board to examine and vouch for all accounts and liabilitiss they may have contracted, and then turn over all books and other property belonging to the institution to the new board of trustees.

SEC. 2269. The board of trustees shall have power to make all purchases necessary to carry into effect the provisions of this act, which purchase made shall be from the lowest responsible bidder. Said board shall as often as it deems necessary, advertise for two consecutive weeks, in two or more newspapers published in the territory, for sealed bids, in duplicate, for the furnishing of all the supplies required until the date of the next advertisement. Bids shall be accepted in detail as near as practicable, and the advertisement shall so state. The contract for such supplies shall be let to the lowest responsible bidder; all bids received by the board shall be kept by its secretary and shall be subject to inspection by any person. No officer or employe shall have authority to purchase at the expense of the territory any article for the hospital except in case of extreme necessity, and when the superintendent shall consider such article absolutely necessary. But all supplies shall be purchased as provided in this section.

[The foregoing section is duplicated in the enrolled law.]

SEC. 2270. For all material, improvements or repairs required at the hospital for the insane the trustees shall advertise as provided in this chapter for the purchase of supplies, and let the same to the lowest responsible bidder, stating in said advertisement the kind of buildings, improvements and material, so that a bidder can bid intelligently. And in no case shall the trustees expend more than five hundred dollars in any one year for improvements, material or repairs, except as above provided.

SEC. 2271. All itemized bills of purchases made, when having been examined by the board of trustees and found correct, shall be certified by the president, or the president, *pro tem.*, of the board then sitting, and the same transmitted to the auditor who shall audit the same and draw his warrant on the territorial treasurer for the amount, and the said treasurer is hereby authorized and required to pay the same out of any money in the treasury not otherwise appropriated.

SEC. 2272. Twenty-six thousand dollars, or so much thereof as may be necessary, are hereby appropriated for each fiscal year, to defray the expenses of said institution; and an additional sum per annum of not to exceed two thousand dollars in any one year, for the purpose of repairs of buildings, the erection of additional wards, and supplying water to said institution.

## CHAPTER CLXVII.

### PROTECTION OF INMATES OF INSANE ASYLUM.

SECTION
2273. Correspondence of patiens free from censorship
2274. Sudden deaths to be reported to coroner.
SECTION
2275. Punishment for failure to comply with the provisions of last two sections.

SEC. 2273. There shall be no censorship exercised over the correspondence of the inmates of insane asylums, except as to the letters to them directed, but their other postoffice rights shall be as free and unrestrained as are those of any other resident, or citizen of this territory, and be under the protection of the same postal laws; and every inmate shall be allowed to write one letter per week, to any person he or she may choose.

And it is hereby made the duty of the superintendent to furnish each and every inmate of each and every insane asylum, both public and private, in the territory of Washington, with suitable material for writing, enclosing, sealing, stamping and mailing letters, sufficient for the writing of one four-page letter a week: *Provided*, They request the same, unless they are otherwise furnished with it; and all these letters shall be dropped by the writers themselves, accompanied by an attendant, when necessary, into a postoffice box, provided by the territory, at the institution, in some place easily accessible to all the patients; and the contents of these boxes shall be collected at least as often as once in each week, by an authorized postoffice agent; and it is hereby made the duty of the superintendent of every insane asylum in the territory of Washington, both public and private, to deliver or cause to be delivered to said person, any letter or writing to him or her directed: *Provided*, The physician in charge does not consider the contents of such letter dangerous to the mental condition of the patient.

Sec. 2274. That in the event of the sudden or mysterious death of any inmate of any insane asylum, either private or public, in the territory of Washington, such fact shall be reported by the superintendent thereof to the coroner of the county in which such death occurs, or to the nearest justice of the peace therein, and a coroner's inquest shall be held as provided by law in other cases. And in all asylum investigations, the testimony of any person offered as a witness, whether sane or insane, shall be competent, and the court and jury shall be the sole judges of the credibility of such testimony.

Sec. 2275. That any person refusing or neglecting to comply with, or willfully and knowingly violating any of the provisions of this chapter shall, upon conviction thereof, be punished by imprisonment in the penitentiary for a term not exceeding three years, or by fine not exceeding five hundred dollars, or both at the discretion of the court, and shall be ineligible to any office in the institution afterwards: *And, provided further*, That the expense of said coroner's inquest shall be paid by the territory out of the fund appropriated for the support of the hospital for the insane.

## CHAPTER CLXVIII.

### EXPENSES TRANSPORTING INSANE PERSONS.

Section
2276. Costs of indigent patients, going to asylum paid by territory.
2277. Sheriff must take all insane persons to asylum.
2278. Upon the order of the court, sheriff may employ guard
2279. Compensation of guard, how fixed.
2280. Compensation of sheriff, how fixed.

Section
2281. Sheriff and guard must furnish itemized bills under oath.
2282. Upon delivery of patient, superintendent must give certificate to sheriff, stating name of patient and county.
2283. Accounts of sheriff and guard, how audited and paid.

Sec. 2276. The cost of transporting persons to the insane asylum shall be paid by the territory of Washington.

Sec. 2277. That the persons adjudged insane must be conveyed to the asylum by the sheriff of the county in which such person, or persons are adjudged insane, or by some person selected by the sheriff.

Sec. 2278. That in case the probate judge shall deem it necessary, he may direct, in the order adjudging the insanity of any person or persons, that the sheriff may select one person as a guard to assist in conveying said person or persons to the asylum.

Sec. 2279. That the person so selected as a guard shall receive three dollars per day, and no more, for his services as such guard, for the time necessarily employed by him is assisting to convey such insane person to the asylum, only; and in addition thereto he shall receive ten cents per mile both ways, computed by the nearest traveled route to the asylum from the county seat in which such person or persons were adjudged insane.

Sec. 2280. That the sheriff shall receive five dollars per day and no more for the time necessarily employed in conveying insane persons to the asylum, and in addition thereto he shall receive ten cents per mile both ways, to be computed by the nearest traveled route to the asylum from the county seat in which such person or persons were adjudged insane.

Sec. 2281. The said sheriff and guard shall each make out in writing an itemized account, showing the number of days necessarily employed in conveying said insane persons to the asylum, the route traveled, the number of miles traveled, as provided in this chapter, and shall verify the same by his oath. In addition thereto said sheriff or guard conveying such insane person shall make a like account of the amount necessarily paid out by him for the board and traveling expenses of the insane person or persons, and shall verify the same by his oath; accounts so made out must be filed with the territorial auditor.

Sec. 2282. Whenever any patient is delivered at the asylum under the provisions of this act, the superintendent of the asylum shall give to the sheriff or guard delivering such patient, a certificate stating the name of the patient, from what county admitted, and the court that committed the same.

Sec. 2283. The territorial auditor shall examine the sworn statement of the sheriff, or guard, and the certificate of the superintendent of the hospital for the insane, and if he find the same correct, he shall audit the same, or any part thereof, and issue a warrant on the territorial treasurer who shall pay the same out of any money in the treasury not otherwise appropriated.

## CHAPTER CLXIX.

### THE PRACTICE OF MEDICINE AND SURGERY REGULATED.

Section
2284. Medical register shall be kept in said county.
2285. Practitioner must have diploma; register of, and affidavit of practitioner; women acting as midwives.
2286. If diploma lost, its contents may be proven.
2287. Persons practicing in territory at passage of chapter without a diploma may continue practice; to file statement of qualifications.
2288. After Jan. 1, 1882, who may practice.
Section
2289. Fees of auditor for registration.
2290. Penalty of non-compliance with this chapter.
2291. Penalty for using fraudulent diplomas, etc.
2292. Non resident physician may practice in territory, but if have office must comply herewith.
2293. Construction of certain words.
2294. Auditors may administer oaths, etc.

Sec. 2284. The board of county commissioners of each county shall purchase a suitable book to be kept in the auditor's office of each county, by each auditor thereof, to be known as the medical register of the county, in which shall be set apart one full page for the registration of each practitioner of medicine and surgery, practicing in such county. And when any such practitioner shall die, or remove from the county, a note of such fact shall be made at the bottom of said page.

Sec. 2285. No person shall practice medicine or surgery, or any of the branches of medicine or surgery for gain, or shall receive or accept for his services as a practitioner of medicine or surgery any fee or reward, directly or indirectly, unless he shall be a graduate of a legally chartered medical college or university, having authority to confer the degree of doctor of medicine (except as provided in section 2287,) and such person shall present to the auditor of the county in which he resides or sojourns, his medical diploma, as well as a true copy of the same, including any indorsements thereon, and shall make affidavit before such auditor that the diploma and endorsements are genuine; thereupon the auditor shall enter the following in the register, to-wit: The name in full of the practitioner, his place of nativity, his place of residence, the name of the college or university that conferred the degree of doctor of medicine, the year when such degree was conferred, and in like manner any other degree or degrees that the practitioner may desire to place on record; to all of which the practitioner shall likewise make affidavit before the auditor. The auditor shall place the copy of such diploma, including the endorsements, on file in his office for inspection by the public. This section shall not be construed so as to prevent women not having the qualifications required by it, from acting as midwives.

Sec. 2286. Any person whose medical diploma has been destroyed or lost, shall present to the auditor of the county in which he resides or sojourns a duly certified copy of his diploma; but if the same is not obtainable, a statement of this fact, together with the names of the professors whose lectures he attended, and the branches of study upon which each professor lectured, to all of which the practitioner shall make affidavit before the auditor, after which the practitioner shall be allowed to register in manner and in form as indicated in section 2287, and the auditor shall place such certified statement on file in his office for inspection by the public. In case the college or university from which the practitioner claims to have graduated be defunct, an authentic record of his graduation shall be filed in lieu of the diploma.

Sec. 2287. Any person who is engaged in the practice of medicine or surgery in this territory at the time of the passage of this chapter, without the degree of doctor of medicine, shall be allowed to continue such practice; but such person shall nevertheless appear before the auditor of the county in which he resides, and shall present to him a statement in writing of that fact. Thereupon the auditor shall enter the following in the register, to wit: The name in full of the practitioner, his written statement, place of his nativity, his place of residence, the time of continuous practice in this territory, and the place or places where such practice was pursued, together with any facts bearing upon his qualifications as a practitioner which he may choose to present, to all of which the practitioner shall likewise make affidavit, and the auditor shall place said certified statement on file in his office for inspection by the public.

Sec. 2288. On and after the 1st day of January, 1882, it shall be unlawful for any person (except as provided in section 2287) not a graduate of a legally chartered medical college or university having the authority to confer the degree of doctor of medicine to enter upon or engage in the practice of medicine or surgery or any of its branches in Washington territory.

Sec. 2289. Every practitioner shall pay to the auditor two (2) dollars, which shall be the compensation in full for registration, and the auditor shall give a receipt for the same: *Provided*, Resident practitioners shall be required to register their statement or diploma in but one county, and that in the county in which he resides.

Sec. 2290. Any person practicing medicine or surgery in this territory who shall fail to comply with the requirements of this chapter, within twenty days after it goes into effect, shall be liable to the punishment provided in section 2292.

Sec. 2291. A practitioner of medicine or surgery who shall present to an auditor a diploma or record which has been obtained or made fraudulently or which is in whole or part a forgery, or shall make any false statement to be filed or registered, or shall practice medicine or surgery, without conforming to the requirements of this chapter or shall otherwise violate or neglect to comply with any of the provisions of this chapter, shall be deemed guilty of a misdemeanor and on conviction shall be punished for each and every offence by a fine of one hundred (100) dollars, one-half to be paid to the informent and the other half to be paid to the county for the use of public schools, or be imprisoned in the county jail for the proper county for a term not exceeding one year, or both, or either, at the discretion of the court.

Sec. 2292. Nothing in this chapter shall be so construed as to prevent any physician or surgeon legally qualified to practice medicine or surgery in the state or territory or province in which he may reside adjacent to the territory, from crossing the border to attend to patients within the territory. But any person or persons not residents of the territory (except as above named,) who may open an office or appoint any place where he may meet patients or receive any fee or reward for prescribing, shall be deemed a sojourner, and shall conform to all the requirements of this chapter, and pay an additional special license of twenty-five (25) dollars, said license to be in force for the period of one year, and for the benefit of the school fund of the county.

Sec. 2293. In construing the provisions of this chapter pronouns used in the masculine gender include the feminine, and the word "written" includes "printed".

Sec. 2294. County auditors of each county are hereby authorized to administer any oaths required by this chapter, and any person who shall make any false affidavit or oath to any statement or matter required by this chapter shall be guilty of perjury.

## CHAPTER CLXX.

### BILLS OF EXCHANGE AND PROMISSORY NOTES.

Section
2295. All promissory notes to have the same effect as inland bills of exchange.
2296. Note signed by agent to bind principal.
2297. Construction of word "person."
2298. Who may maintain action on such notes.
2299. Notes payable to the maker thereof, or to a fictitious person.
2300. Days of grace.
2301. What days considered as Sunday
2302. Acceptance to be in writing.
2303. Acceptance written on a paper other than a bill; when binding.
2204. When a promise to accept made before the bill is drawn, deemed an acceptance.
Section
2305. Holder may require the acceptance to be written on the bill.
2306. Last four secctions not to be construed to impair the right of the party to whom promise to accept was made to recover damages.
2307. Drawee destroying a bill or refusing to deliver it, deemed to have accepted it.
2308. Rate of damages upon protest.
2309. What such damage in lieu of; what additional damages holder may recover.
2310. Not to apply to bill, etc., drawn or made before its passage.

Sec. 2295. All notes in writing made and signed by any person whereby he shall promise to pay to any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange according to the custom of merchants.

SEC. 2296. Every note signed by the agent of any person, under a general or special authority, shall bind such person and have the same effect, and be negotiable as provided in the preceding section.

SEC. 2297. For the purposes of this chapter, the word person shall be construed to extend to every corporation capable by law of making contracts.

SEC. 2298. The payees and indorsees of every such note payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, against the maker and indorsers of the same respectively, in like manner as in cases of inland bills of exchange and not otherwise.

SEC. 2299. Such notes made payable to the maker thereof, or the order of a fictitious person, shall, it negotiated by the maker, have the same effect and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to the bearer.

SEC. 2300. On all bills of exchange payable at sight, or at a future day certain within this territory; and on all negotiable promissory notes, orders, and drafts payable at a future day certain within this territory, in which there is not an express stipulation to the contrary, three days' grace shall be allowed by the custom of merchants on foreign bills of exchange, payable at the expiration of a certain period after date, or at sight.

SEC. 2301. The fourth day of July, and the twenty-fifth day of December, shall, for all purposes whatsoever as regards the presenting for payment or acceptance and of the protesting and giving notice of the dishonor of bills of exchange, promissory notes, drafts and checks, be treated and considered as Sunday.

SEC. 2302. No person within this territory shall be charged as an acceptor of a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

SEC. 2303. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor except in favor of a person to whom such acceptance shall have been shown. and who, on the faith thereof, shall have received the bill for a valuable consideration.

SEC. 2304. An unconditional promise in writing to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of every person who, upon the faith thereof, shall have received the bill for a valuable consideration.

SEC. 2305. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill; a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

SEC. 2306. The last four sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, or his refusal to accept such bill.

SEC. 2307. Every person, upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted, or non-accepted, to the holder, shall be deemed to have accepted the same.

SEC. 2308. The rate of damages to be allowed and paid upon the usual protest for non-payment of bills of exchange drawn or indorsed within this territory, if payable without the limits of the United States, shall be ten per cent. upon the contents thereof; and if such bill be payable out of this territory, but within some state or territory of the United States, such rate of damages shall be five per cent. upon the contents thereof.

SEC. 2309. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to, and at the time of giving notice of non-payment, but the holder of such bill shall be entitled to demand and receive lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment shall have been given, and payment demanded.

SEC. 2310. Nothing in this chapter shall apply to bills of exchange, promissory notes, or other negotiable instruments made or drawn before its passage.

## CHAPTER CLXXI.

### DEEDS.

SECTION
2311. All conveyances, etc., of real estate, or interest therein, to be by, requisites of.
2312. To bind a married woman, she must join in conveyance.
2313. Her acknowledgment. how taken.
2314. Deeds to be recorded; valid from date of record.
2315. Before whom acknowledgments may be taken in territory.
2316. Before whom ackowledgments may be taken out of the territory.
2317. If acknowledged before persons having no seal, official character must be shown by certificate.
2318. All defective deeds declared legal, when.
2319. How acknowledments may be taken in foreign countries.
2320. How such acknowledgment must be certified.
2321. Certificate shall be *prima facie* evidence of facts stated.
2322. All deeds acknowledged according to provisions of this act, declared legal.
2323. Third parties charged with notice of contract when instrument defectively executed is filed and recorded.

SEC. 2311. All conveyances of real estate or of any interest therein, and all contracts creating or evidencing any incumbrance upon real estate shall be by deed.

SEC. 2312. A deed shall be in writing, signed and sealed by the party bound thereby, witnessed by two witnesses and acknowledged by the party making it before some person authorized by the laws of this territory to take the acknowledgment of deeds.

SEC. 2313. A married woman shall not be bound by any deed affecting her own real estate, or releasing dower, unless she shall be joined in the conveyance by her husband and shall acknowledge that she did voluntarily, of her own free will execute the deed.

SEC. 2314. All deeds and mortgages shall be recorded in the office of the county auditor of the county where the land is situated and shall be valid as against *bona fide* purchasers, from the date of their filing or recording in said office; and when so filed or recorded shall be notice to all the world.

SEC. 2315. Acknowledgments of deeds, mortgages and other instruments in writing may be taken, in this territory, before a judge of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the district court in this territory, or the clerk thereof, or the deputy of such clerk, or before a judge of the probate court, or before a justice of the peace, or a county auditor, or the deputy of such auditor, or a qualified notary public.

Sec. 2316. Deeds or conveyances of lands or of any estate or interest therein situated in this territory, may be executed or acknowledged in any other state or territory of the United States in the form prescribed for executing and acknowledging deeds within this territory, and the execution thereof may be acknowledged before any person authorized to take acknowledgments of deeds by the laws of the state or territory wherein the acknowledgment is taken or before any commissioner appointed by the governor of this territory for such purpose.

Sec. 2317. In the case provided for in the preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of this territory for that purpose, or by the clerk of the court of record of said state or territory or by a notary public or other officer having a seal of office, then such deed shall have attached thereto a certificate of the clerk of the court of record, under the seal of said court of said county or district, or a certificate of any other proper certifying officer of said district or county, within which said acknowledgment was taken, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he therein represents himself to be, that he is authorized by law to take acknowledgments of deeds and that he verily believes the signature of the person subscribed thereto to be genuine.

Sec. 2318. All deeds, mortgages, or other instruments in writing, which, prior to the passage of this chapter may have been acknowledged before either of the foregoing named officers, or deputies, or before the clerk of any court, or his deputies, heretofore established by the laws of this territory, are hereby declared legal and valid, in so far as such acknowledgment is concerned.

Sec. 2319. Acknowledgments of all deeds, mortgages, and other instruments in writing, that are required to be acknowledged by any law of this territory, may be made and taken in any foreign country beyond the limits of the United States, before any minister plenipotentiary, charge d'affairs, consul general, vice consul or commercial agent, appointed by the government of the United States, or before the proper officer of any court of said country, or before the mayor or other chiet magistrate of any city, town or other municipal corporation therein.

Sec. 2320. The person, or officer, taking such acknowledgment, shall certify the same by a certificate written on, or annexed to said mortgage, deed, or instrument, which certificate shall be under his official seal, if any he has, and such certificate shall recite in substance, that the deed, mortgage, or instrument, was acknowledged by the person or persons whose name, or names, are signed thereto as grantor, or principal before him as such officer, with the date of such acknowledgment.

Sec. 2321. Such certificate shall be *prima facie* evidence of the facts therein recited, and on such certificate, such deed, instrument or mortgage shall be admitted to record in the auditor's office of the proper county, with like effect as if the same was acknowledged in this territory, before an officer authorized to take acknowledgments of deeds; and certified copies of such deeds, mortgages, or other instruments of writing, certified by the auditor of the county where recorded, shall be received in evidence to the same extent, and with like effect as certified copies of deeds acknowledged within this territory are received in evidence, when certified by such auditor.

Sec. 2322. That all deeds, mortgages, and other instruments at any time heretofore acknowledged according to the provisions of this chapter are hereby declared legal and valid.

Sec. 2323. Every instrument in writing purporting to convey, or encumber real property, which has been recorded in the proper auditor's office, although such instrument may not have been executed, and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws, regulating the execution, acknowledgment and recording of such instrument then in force.

## CHAPTER CLXXII.

### FRAUDULENT CONVEYANCES.

Section.
2324. Certain conveyances void against existing or subsequent creditors.
2325. Certain contracts void, unless some note or memorandum thereof be in writing
Section.
2326. Sale of goods, etc., to the value of fifty dollars or more, when valid.
2327. When bill of sale is valid.

Sec. 2324. That all deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors of such person.

Sec. 2325. In the following cases specified in this section, any agreement, contract and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized; that is to say:

1st. Every agreement that by its terms is not to be performed in one year from the making thereof.

2d. Every special promise to answer for the debt, default, or misdoings of another person.

3d. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

4th. Every special promise made by an executor or administrator to answer damages out of his own estate.

Sec. 2326. No contract for the sale of any goods, wares, or merchandise, for the price of fifty dollars, or more, shall be good and valid, unless the purchaser shall accept and receive part of the goods so sold, or shall give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing of the bargain be made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

Sec. 2327. No bill of sale for the transfer of personal property shall be valid, as against existing creditors, or innocent purchasers where the property is left in the possession of the vendor, unless the said bill of sale be recorded in the auditor's office of the county in which the property is situated, within ten days after such sale shall be made.

# CHAPTER CLXXIII.

## TOWN PLATS.

SECTION
2328. Persons laying off towns shall record plat, etc.
2329. Any donation to societies, etc., shall be considered as a quit claim deed, etc.
2330. Lots laid off in addition, shall be recorded, etc.
2331. Persons offering such plat for record, to acknowledge the same, etc.
SECTION
2332. Streets, lanes and alleys, considered as highways; fines to be imposed for refusing to comply with requisition, etc.

SEC. 2328. Any person or persons, who may hereafter lay off any town within this territory, shall, previous to the sale of any lots within such town, cause to be recorded in the recorder's office of the county wherein the same may lie, a plat of said town, with the public grounds, (if any there be,) streets, lanes and alleys, with their respective widths properly marked, and the lots regularly numbered, and the size stated on said plat.

SEC. 2329. Every donation or grant to the public, or to any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on the plat of the town, or wherein such donation or grant may have been made, shall be considered, to all intents and purposes, as a quit claim deed to the said donee or donees, grantee or grantees, for his, her or their use, for the purposes intended by the donor or donors, grantor or grantors, as aforesaid.

SEC. 2330. Every person hereinafter laying off any lots in addition to any town, shall, previous to the sale of such lots, have the same recorded under the like regulations as are provided for recording the original plat of said town, and thereafter the same shall be considered an addition thereto.

SEC. 2331. Every person whose duty it may be to comply with the foregoing regulations shall, at or before the time of offering such plat for record, acknowledge the same before the recorder of the proper county, or any other officer who is authorized by law to take the acknowledgment of deeds, a certificate of which acknowledgment shall be, by the officer taking the same, endorsed on or annexed to such plat and recorded therewith.

SEC. 2332. All streets, lanes and alleys, laid off and recorded in accordance with the foregoing provisions, shall be considered, to all intents and purposes, public highways, and any person who may lay off any town or any addition to any town in this territory, and neglect or refuse to comply with the requisitions aforesaid, shall forfeit and pay for the use of said town, for every month he may delay a compliance with the provisions of this chapter, a sum not exceeding one hundred dollars, nor less than five dollars, to be recovered by civil action, in the name of the treasurer of the county.

# CHAPTER CLXXIV.

## VACATING TOWN PLATS.

SECTION
2333. Persons vacating lots, streets, alleys, etc., to petition county commissioners, etc.
2334. Discretion with court, etc.
2335. Lots, etc., vacated, shall attach to adjoining lots, etc.
SECTION
2336. Vacating lots, streets, etc., in incorporated town; petition for.
2337. When towns laid off do not improve, may be vacated, etc.

SEC. 2333. Any person or body corporate interested in any town in this territory not incorporated, who may desire to vacate any lot, street, alley, common, or any part thereof, or may desire to vacate any public square, or part thereof, in any such town, it shall be lawful for any such person or corporation to petition the board of county commissioners for the proper county, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated, which petition shall be filed with the county auditor twenty days previous to the sitting of said court, and notice of the pendency of said petition shall be given for the same space of time by written or printed notices set up in three of the most public places in said town, containing a description of the property to be vacated.

Sec. 2334. Said court, if satisfied that the aforesaid notice has been given, may, in their discretion, vacate the same, with such conditions and restrictions as they may deem reasonable, and for the public good.

Sec. 2335. The part so vacated, if it be a lot or lots, shall vest in the rightful owner, who may have the title thereof according to law; and if the same be a street or alley, the same shall be attached to the lots or ground bordering on such street or alley; and all right or title thereto shall vest in the person or persons owning the property on each side thereof, in equal proportions: *Provided*, The lots or grounds so bordering on such street or alley, have been sold by the original owner or owners of the soil; if, however, said original owner or owners possesse such title to the lots or ground bordering said street or alley on one side only, the title to the same shall vest in the said owner or owners if the said court shall judge the same to be just and proper.

Sec. 2336. In cases where any person interested in any incorporated town in this territory may desire to vacate any street, alley, lot or common, or any part thereof, it shall be lawful for such person to petition the trustees in like manner as persons interested in towns not incorporated are authorized to petition the board of county commissioners; and the same proceedings shall be had thereon before such trustees, or other body corporate having jurisdiction, as are authorized to be had before the board of county commissioners; and such trustees or other corporate body may determine on such application under the same restrictions and limitations as are contained in the foregoing provisions.

Sec. 2337. In all cases where any person or persons have laid out, or shall hereafter lay out a town, or any addition to any town, and such town or addition does not improve, and such person or persons shall be the legal owner or owners of all the lots contained in such town or addition, such person or persons, or any other party or parties, who shall become the legal owner or owners thereof, may have such town or addition or any part thereof, vacated in like manner as is hereinbefore provided for the vacation of lots, streets and alleys.

## CHAPTER CLXXV.

### DEFECTIVE TOWN PLATS LEGALIZED.

SECTION
2338. Defective plats heretofore recorded, declared legal.
2339. Certified copies of such plats, received in evidence.

SECTION
2340. Cities authorized to correct surveys, by ordinance.
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Sec. 2338. All city or town plats or any addition or additions thereto, heretofore made and recorded in the county auditor's office of any county in Washington territory, showing lots, blocks, streets, alleys or public grounds, shall be conclusive evidence of the location and size of the lots, blocks and public grounds and the location and width of each and every street or alley marked, laid down or appearing on such plat, and that all the right, title, interest or estate which the person or persons making or recording such plat, or causing the same to be made, or recorded, had at the time of making or recording such plat in or to such streets, alleys or public grounds was thereby dedicated to public use, whether the same was made, executed or acknowledged in accordance with the provisions of the laws of this territory in force at the time of making the same or not.

Sec. 2339. A copy of any city or town plat or addition thereto recorded in the manner provided for in the preceding section, certified by the county auditor of the county in which the same is recorded to be a true copy of such record and the whole thereof, shall be received in evidence in all the courts of this territory, with like effect as the original.

Sec. 2340. That whenever the recorded plat of any city or addition thereto does not definitely show the location or size of lots or blocks, or the location or width of any street or alley in such city or addition, the city council of the city in which the land so platted is located, is hereby authorized and empowered by ordinance and the action of its proper officers, to cause a new and correct survey and plat of such city or addition to be made, and recorded in the office of the county auditor of the county in which such city or addition is located, which corrected plat shall follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the officer or surveyor making the same shall be endorsed thereon, referring to the original plat corrected thereby, and the deficit existing therein, and corrected by such new survey and plat; and the ordinance authorizing the making of such plat shall be recorded in the office of the county auditor of said county, and said certificate shall show where said ordinance is recorded, and such plat when so made and recorded, or a copy thereof certified as provided in section twenty-three hundred and thirty-nine shall be admissable in evidence in all the courts in this territory.

Sec. 2341. All incorporated cities in the territory of Washington are hereby authorized and empowered to regulate and prescribe the manner and form of making any future survey or plat of lands within their respective limits and enforce such regulations by a fine of not exceeding one hundred dollars ($100.00), to be recovered by and in the name of such city, or imprisonment not exceeding twenty days for each violation of any ordinance regulating such survey and platting: *Provided*, That nothing in this chapter shall be construed so as to apply to additions to towns in which no lots have been sold.

## CHAPTER CLXXVI.

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SECTION
wires, insulators, etc., or delaying messages.
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2351. Employes exempt from military and jury service.
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2353. Notices by telegraph, if received, deemed actual notice.
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SECTION
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2358. Of service by, in civil suits and proceedings.
2359. How seal or revenue stamp to be recited in telegram.
2360. Stamp, seal or device of company in this territory may be filed with secretary and become sole property of the company.
2361. Order of transmission of dispatches.
2362. Construction of terms, "telegraphic copy" and "telegraphic duplicate."

SEC. 2342. If any officer, agent, operator, clerk or employe of a telegraph company, or any other person, shall willfully divulge to any other person than the party from whom the same was received, or to whom the same is addressed, or his agent or attorney any message received or sent, or intended to be sent, over any telegraph line, or the contents, substance, purport, effect or meaning of such message or any part thereof, or shall willfully alter any such message by adding thereto or omitting therefrom any word or words, figure or figures, so as to materially change the sense, purport or meaning of such message to the injury of the person sending or desiring to send the same, or to whom the same was directed, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment in the discretion of the court: *Provided*, That when numerals or words of number occur in any message, the operator or clerk, sending or receiving, may express the same in words or figures, or in both words andfigures, and such fact shall not be deemed an alteration of the message, nor in any manner affecting its genuineness, force or validity.

SEC. 2343. If any agent, operator or employe in any telegraph office, or any other person, shall knowingly or willfully send by telegraph to any person or persons, any false or forged message, purporting to be from such telegraph office, or from any other person, or shall willfully deliver, or cause to be delivered, to any person any such message, falsely purporting to have been received by telegraph; or if any person or persons shall furnish or conspire to furnish, or cause to be furnished, to any such agent, operator or employe, to be so sent by telegraph, or to be so delivered, any such message, knowing the same to be false, or forged, with the intent to deceive, injure or defraud any individual, partnership or corporation, or the public, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

SEC. 2344. If any agent, operator or employe in any telegraph office, shall in any way use or appropriate any information derived by him from any private message or messages passing through his hands and addressed to any other person or persons, or in any other manner acquired by him by reason of his trust as such agent, operator or employe, or shall trade or speculate upon any such information so obtained, or in any manner turn, or attempt to turn, the same to his own account, profit or advantage, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; and shall also be liable in treble damages to the party aggrieved, for all loss or injury sustained by reason of such wrongful act.

SEC. 2345. If any agent, operator or employe in any telegraph office, shall unreasonably and willfully refuse or neglect to send any message received at such office for transmission, or shall unreasonably and willfully postpone the same out of its order, or shall unreasonably and willfully refuse or neglect to deliver any message received by telegraph, the person so offending shall be deemed guilty of a misdemeanor, and may be punished by fine, not to exceed five hundred dollars, or imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That nothing herein contained shall be so construed to require any message to be received, transmitted or delivered, unless the charges thereon shall have been paid or tendered, nor to require the sending, receiving or delivery of any message counselling, aiding, abetting or encouraging treason against the government of the United States, or other resistance to lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

SEC. 2346. If any person not connected with any telegraph office shall, without the authority or consent of the person or persons to whom the same may be directed, willfully and unlawfully open any sealed envelope enclosing a telegraphic message, and addressed to any other person or persons, with the purpose of learning the contents of such message, or shall fraudulently represent any other person or persons, and thereby procure to be delivered by himself any telegraphic message addressed to such other person or persons, with the intent to use, destroy or detain the same from the person or persons entitled to receive such message, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; and shall, moreover, be liable in treble damages to the party injured, for all loss and damages sustained by reason of such wrongful act.

SEC. 2347. If any person not connected with any telegraph company, shall, by means of any machine, instrument or contrivance, or in any other manner, willfully and fraudulently read or attempt to read any message, or to learn the contents thereof, whilst the same is being sent over any telegraph line, or shall willfully or fraudulently or clandestinely learn, or attempt to learn, the contents or meaning of any message while the same is in any telegraph office, or is being received thereat, or sent therefrom, or shall use or attempt to use, or communicate to others, any information so obtained by any person, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment in the discretion of the court.

SEC. 2348. If any person shall, by the payment or promise of any bribe, inducement or reward, procure or attempt to procure any telegraph agent, operator or employe, to disclose any private message, or the contents, purport, substance or meaning thereof, or shall offer to any such agent, operator or employe any bribe, compensation or reward, for the disclosure of any private information received by him, by reason of his trust as such agent, operator or employe, or shall use or attempt to use any such information so obtained, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

SEC. 2349. If any person shall willfully or maliciously cut, break or throw down any telegraph poles, or any tree, or other material used in any line of telegraph, or shall willfully and maliciously break, displace or injure, any insulator in use in any telegraph line, or shall willfully or maliciously cut, break or remove from its insulator, any wire used as a telegraph line, or shall, by the attachment of a grouud wire, or by any other contrivance willfully destroy the insulation of such telegraph line, or interrupt the transmission of the electric current through the same, or shall in any other manner willfully injure, molest, or destroy any property or materials appertaining to any telegraph line, or shall willfully interfere with the use of any telegraph line, or obstruct or postpone the transmission of any message over the same, or procure or advise any such injury, interference or obstruction, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed five hundred dollars, or imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court; and shall, moreover, be liable to the telegraph company whose property is injured, in a sum equal to one hundred times the amount of actual damages sustained thereby.

SEC. 2350. Any person offending against the provisions of sections 2342, 2243, 2347 and 2348, shall, in addition to the penalty therein prescribed, be liable to the party damaged in a civil suit for all damages occasioned thereby.

SEC. 2351. All operators, clerks and persons in the employ of any telegraph company, whilst employed in the offices of said company, or along the route of its telegraph line, shall be exempt from militia duty and from serving on juries, and from any fine or penalty for the neglect thereof.

SEC. 2352. Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph and signed by the person or persons sending the same, or by his or their authority, shall be held and deemed to be communications in writing.

SEC. 2353. Whenever any notice, information or intelligence, written or otherwise, is required to be given, the same may be given by telegraph: *Provided*, That the dispatch containing the same be delivered to the person entitled thereto, or to his agent or attorney. Notice by telegraph shall be deemed actual notice.

SEC. 2354. Any power of attorney, or other instrument in writing, duly proved or acknowledged, and certified so as to be entitled to record may, together with the certificate of its proof or acknowledgment, be sent by telegraph, and telegraphic copy, or duplicate thereof, shall, prima facie, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect as the original.

Sec. 2355. Checks, due bills, promissory notes, bills of exchange and all orders or agreements for the payment or delivery of money, or other thing of value, may be made or drawn by telegraph, and when so made or drawn, shall have the same force and effect to charge the maker, drawer, indorser or acceptor thereof, and shall create the same rights and equities in favor of the payee, drawer, indorse, acceptor, holder or bearer thereof, and shall be entitled to the same days of grace as if duly made or drawn and delivered in writing; but it shall not be lawful for any person other than the person or drawer thereof, to cause any such instrument to be sent by telegraph, so as to charge any person thereby, except as hereinafter in the next section otherwise provided. Whenever the genuineness or execution of any such instrument received by telegraph shall be denied on oath, by or on behalf of the person sought to be charged thereby, it shall be incumbent upon the party claiming under or alleging the same, to prove the existence and execution of the original writing from which the telegraph copy or duplicate was transmitted. The original message shall in all cases be preserved in the telegraph office from which the same is sent.

Sec. 2356. Except as hereinbefore otherwise provided, any instrument in writing, duly certified, under his hand and official seal, by a notary public, commissioner of deeds, or clerk of a court of record, to be genuine, within the personal knowledge of such officer, may, together with such certificate, be sent by telegraph and the telegraphic copy thereof shall, prima facie, only have the same force, effect and validity, in all respects whatsoever as the original, and the burden of proof shall rest with the party denying the genuineness, or due execution of the original.

Sec. 2357. Whenever any person or persons shall have been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any judge of the supreme court, or of any district or probate court, may endorse thereon an order signed by him and authorizing the service thereof by telegraph, and thereupon such warrant and order may be sent by telegraph to any marshal, sheriff, constable or policeman, and on the receipt of the telegraphic copy thereof by any such officer, he shall have the same authority and be under the same obligations to arrest, take into custody and detain the said person or persons, as if the said original warrant of arrest, with the proper direction for the service thereof, duly endorsed thereon, had been placed in his hands, and the said telegraphic copy shall be entitled to full faith and credit, and have the same force and effect in all courts and places as the original; but prior to indictment and conviction, no such order shall be made by any officer, unless in his judgment there is probable cause to believe the said accused person or persons guilty of the offense charged: *Provided*, The making of such order, by any officer aforesaid, shall be prima facie evidence of the regularity thereof, and of all the proceedings prior thereto. The original warrant and order, or a copy thereof, certified by the officer making the order, shall be preserved in the telegraph office from which the same is sent, and in telegraphing the same, the original or the said certified copy may be used.

Sec. 2358. Any writ or order in any civil suit or proceeding, and all the papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ or order or paper so transmitted, may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and with the same force and effect, in all respects, as the original thereof might be, if delivered to him, and the officer or person serving or executing the same, shall have the same authority and be subject to the same liabilities as if the said copy were the original. The original, when a writ of order, shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent; in sending it, either the original or certified copy may be used by the operator for that purpose.

SEC. 2359. Whenever any document to be sent by telegraph bears a seal, either private or official, it shall not be necessary for the operator in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L. S.," or by the word "seal," and whenever any document bears a revenue stamp, it shall be sufficient to express the same in the telegraphic copy, by the word "stamp," without any other or further description thereof.

SEC. 2360. The president or secretary of any telegraph company doing business in this territory, may file in the office of the secretary of the territory, a copy of any printed blank or envelope, picture or device used or intended so to be, by said company, with his certificate that the same is commonly used, or is intended so to be, in the business of said company, as a distinguishing mark, notice or index of said business, and thereupon such blank, envelope, picture or device, shall become the property of said company, and it shall not be lawful for any person, unless by the employment or permission of said company, to print, publish, distribute or use, or cause to be printed, published, distributed or used, either of them, or any copy, counterfeit, similitude or imitation thereof. Any person willfully offending against the provisions of this section, may be punished by fine, not to exceed five hundred dollars, or imprisonment not to exceed six months.

SEC. 2361. It shall be the duty of any telegraph company, doing business in the territory, to transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit, by the person or persons whose dispatch is postponed out of its order: *Provided*, That communications to and from public officers on official business, may have precedence over all other communications: *And*, *provided also*, That intelligence of general and public interest may be transmitted for publication out of its order.

SEC. 2362. The term "telegraphic copy," or "telegraphic duplicate," whenever used in this chapter, shall be construed to mean any copy of a message, made or prepared for delivery at the office to which said message may have been sent by telegraph.

## CHAPTER CLXXVII.

### AGE OF MAJORITY.

SECTION
2363. Males of full age at twenty one, females at eighteen.

SECTION
2364. Females married to person of full age, are of full age.

SEC. 2363. That males shall be deemed and taken to be of full age for all purposes at the age of twenty-one years and upwards; females shall be deemed and taken to be of full age at the age of eighteen years and upwards.

Sec. 2364. All females married to a person of full age shall be deemed and taken to be of full age.

[See act, approved January 18, 1866 entitled "An act concerning minors, their rights, and liabilities].

## CHAPTER CLXXVIII.

### GREAT SEAL OF THE TERRITORY.

Section
2365. The secretary of territory its custodian.
Section
2366. When to be used.

Sec. 2365. The secretary of the territory is hereby declared the lawful custodian of the great seal of the territory.

Sec. 2366. The great seal shall be used in the authentication of all acts of the executive requiring authentication, and also in attesting and authenticating all certificates and other documents properly issued by said secretary.

## CHAPTER CLXXIX.

### GOVERNOR'S PROCLAMATIONS.

Section
2367. Publication to be paid by territory; amount allowed.

Sec. 2367. When the governor is authorized or required by law to issue a proclamation, payment for publishing the same shall be made out of the territorial treasury. The territorial auditor is hereby authorized to draw a warrant in favor of the person entitled to the same for such publication. The amount allowed any newspaper for the publication of a proclamation, shall not exceed the sum of twelve dollars.

## CHAPTER CLXXX.

### RATE OF INTEREST ESTABLISHED.

Section
2368. Legal rate.
Section
2369 Parties may contract in writing for any rate.

Sec. 2368. The legal rate of interest shall be ten per centum per annum.

Sec 2369. Any rate of interest agreed upon by parties to a contract, specifying the same in writing, shall be valid and legal.

## CHAPTER CLXXXI.

### LIMITED PARTNERSHIP.

Section
2370. For what purpose may be formed.
2371. Of whom may consist; contribution by general and special partners; liability.
2372. Certificate of, its requisites.
2373. Penalty for false statement in certificate.
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2374. Continuance of and renewal, mode of.
2375. As to names of firm, if name of special used, liable as general.
Section
2376. Capital shall not be withdrawn, liability of special partner.
2377. Actions to be by and against general partners except.
2378. Dissolution of.
2379. Except as herein provided, all members liable as general partners.

Sec. 2370. Limited partnership for the transaction of mercantile, mechanical or manufacturing business may be formed within this territory, by two or more persons, upon the terms, and subject to the conditions contained in this chapter.

Sec. 2371. A limited partnership may consist of two or more persons, who are known and called general partners, and are jointly and severally liable as general partners now are by law, and of two or more persons who shall contribute to the common stock a specific sum in actual money as capital, and are known and called special partners, and are not personally liable for any debts of the partnership, except as in this chapter specially provided.

Sec. 2372. The persons forming such partnership shall make and severally subscribe a certificate, in duplicate, and file one of such certificates with the county auditor of the county in which the principal place of business of the partnership is to be. Before being filed, the execution of such certificate shall be acknowledged by each partner subscribing it before some officer authorized to take acknowledgments of deeds, and such certificate shall contain the name assumed by the partnership and under which its business is to be conducted, the names and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the partnership is to commence, and when it is to terminate.

Sec. 2373. Such partnership cannot commence before the filing of the certificate of partnership, and if a false statement is made in such certificate, all the persons subscribing thereto are liable as general partners for all the debts of the partnership. The partners shall, for four consecutive weeks immediately after the filing of the certificate of partnership, publish a copy of the same in some weekly newspaper published in the county where the principal place of business of the partnership is, or if no such paper be published therein, then in some newspaper in general circulation therein, and until such publication is made and completed, the partnership is to be deemed general.

Sec. 2374. A limited partnership may be continued or renewed by making, acknowledging, filing, and publishing a certificate thereof, in the manner provided in this chapter for the formation of such partnership originally, and every such partnership, not renewed or continued as herein provided, from and after the expiration thereof according to the original certificate, shall be a general partnership.

Sec. 2375. The business of the partnership may be conducted under a name in which the names of the general partners only shall be inserted, without the addition of the word company or any other general term. If the name of any special partner is used in such firm with his consent or privately, he shall be deemed and treated as a general partner, or if he personally makes any contract, respecting the concerns of the partnership, with any person except the general partners, he shall be deemed and treated as a general partner in relation to such contract, unless he makes it appear that in making such contract he acted and was recognized as a special partner only.

Sec. 2376. During the continuance of any partnership formed under this chapter no part of the capital stock thereof shall be withdrawn, nor any division of interests or profits be made, so as to reduce such capital stock below the sum stated in the certificate of partnership before mentioned; and if at any time during the continuance or at the termination of such partnership, the property or assets thereof are not sufficient to satisfy the partnership debts then the special partners shall be severally liable for all sums or amounts by them in any way received or withdrawn from such capital stock, with interest thereon from the time they were so received or withdrawn respectively.

Sec. 2377. All actions, suits or proceedings respecting the business of such partnership, shall be prosecuted by and against the general partners only, except in those cases where special partners or partnerships are to be deemed general partners, or partnership, in which case all the partners deemed general partners may join therein; and excepting also those cases where special partners are severally liable on account of sums or amounts received or withdrawn from the capital stock, as provided in section 2376.

Sec. 2378. No dissolution of a limited partnership shall take place except by operation of law, before the time specified in the certificate of partnership, unless a notice of such dissolution, subscribed by the general and special partners, is filed with the original certificate of partnership or the certificate, if any, renewing or continuing such partnership, nor unless a copy of such notice be published for the time and in the manner prescribed for the publication of the certificate of partnership.

Sec. 2379. In all cases not otherwise provided for in this chapter all the members of limited partnerships shall be subject to all the liabilities, and entitled to all rights of general partners.

## CHAPTER CLXXXII.

### MARRIAGE.

Section
2380. A civil action; who may make.
2381. What are voidable.
2382. Who may join parties in; parties must assent to in presence of witnesses.
2383. Certificate to parties married, its requisites.
2384. Official; who join parties in marriage, to file certificate; form.
2385. Probate judge to record marriage; fees.
2386. Penalty for official not filing certificate.
2387. By unauthorized persons not void.
2388. Children born out of wedlock, legitimatized when.
2389. Solemnized according to ritual of any society, valid.
2390. County auditors to issue license.
2391. License to parties under age require written consent of parent or guardian.
2392. Affidavit filed, justification of auditor.
2393. Record of licenses to be kept.
2394. Penalty for auditor unlawfully issuing license.
2395. Penalty for unlawfully joining parties in.

Sec. 2380. Marriage is a civil contract which may be entered into by males of the age of twenty-one years, and females of the age of eighteen years, who are otherwise capable.

Sec. 2381. When either party to a marriage shall be incapable of consenting thereto, for want of legal age or a sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marraige is voidable, but only at the suit of the party laboring under the disability, or upon whom the force or fraud is imposed.

Sec. 2382. Marriage may be solemnized according to the ritual or ceremonies of any religious denomination, or by any regularly ordained and authorized minister or priest of any church or religious denomination in this territory and by any justice or judge of a district or probate court any where within the territory, and by any justice of the peace within their respective counties.

Sec. 2383. In the solemnization of marriage no particular form is required, except that the parties thereto shall assent or declare in the presence of the minister, priest, or judicial officer solemnizing the same, and in the presence of at least two attending witnesses, that they take each other to be husband and wife.

SEC. 2384. The person solemnizing a marriage shall give to each of the parties thereto, if required, a certificate thereof, specifying therein the names and residence of the parties, and of at least two witnesses present, the time and place of such marriage, and the date of the license thereof, and by whom issued.

SEC. 2385. A person solemnizing a marriage shall, within three months thereafter make and deliver to the judge of the probate court of the county where the marriage took place a certificate containing the particulars specified in the last section, which said certificate may be in the following form:

TERRITORY OF WASHINGTON, }
County of ——. }

This is to certify that the undersigned, a —, by authority of a license bearing date — day of —. A. D., 18—, and issued by the county auditor of the county of —, did, on the — day of —, A. D., 18—, at the house of —, in the county and territory aforesaid, join in lawful wedlock, A B, of the county of —, of the —, and C D, of the county of —, of the —, with their mutual assent, in the presence of F H and E G, witnesses.

Witness my hand. ———

SEC. 2386. The judge of the probate court shall file such certificate and record the same in the record of marriages, and the legal fee therefor shall be one dollar, to be paid by the person solemnizing the marriage who shall be entitled to demand and receive the same from the parties before the marriage.

SEC. 2387. Any person solemnizing a marriage who shall willfully refuse or neglect to make and deliver to the judge of the probate court for record the certificate mentioned in the last section and pay the fee for recording the same within the time in such section specified, shall be deemed guilty of a misdemeanor, and upon conviction shall pay, for such refusal or neglect, a fine of not less than twenty-five nor more than three hundred dollars.

SEC. 2388. A marriage solemnized before any person professing to be a minister or a priest of any religious denomination in this territory or professing to be an authorized officer thereof, is not void, nor shall the validity thereof be in any way affected on account of any want of power or authority in such person, if such marriage be consummated with a belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. Illegitimate children become legitimate by the subsequent marriage of their parents with each other.

SEC. 2389. All marriages to which there are no legal impediments, solemnized before or in any religious organization or congregation, according to the established ritual or form commonly practiced therein, are valid, and a certificate containing the particulars specified in sections 2384 and 2385, shall be made and filed for record by the person or persons presiding or officiating in or recording the proceedings of such religious organization or congregation, in the manner and with like effect as in ordinary cases.

SEC. 2390. Before any persons can be joined in marriage, they shall procure a license from a county auditor authorizing any person or religious organization or congregation to join together the persons therein named as husband and wife.

Sec. 2391. Such license shall not issue without the written consent of the father, mother, or other guardian of the person for whom the license is required, in cases when such person is a female under eighteen years of age or a male under twenty-one years of age, and the officer granting the license shall be satisfied that said persons are over that age before he grants such license without such written consent.

Sec. 2392. Before the license issues the applicant therefor shall file with the auditor an affidavit of some credible person, other than the parties seeking the license, showing the facts specified in the last section or any of them that may be necessary to be shown in the particular case, except the consent of the parents or guardian, and such affidavit shall be sufficient authority to the county auditor so far as such facts are concerned, for issuing the license.

Sec. 2393. The person solemnizing the marriage is authorized to retain in his possession the license, but the county auditor who issues the same, before delivering it, shall enter in his marriage record a memorandum of the names of the parties, the consent of the parents or guardian, if any, and the name of the affiant and the substance of the affidavit upon which said license issued, and the date of such license.

Sec. 2394. Any county auditor who shall issue a license contrary to the provisions of this chapter, or chapter 74, section 949, of the criminal practice act, shall, upon conviction thereof, be punished by fine of not more than five hundred nor less than one hundred dollars.

Sec. 2395. Any person who shall undertake to join others in marriage knowing that he is not lawfully authorized so to do, or any person authorized to solemnize marriage, who shall join persons in marriage contrary to the provisions of this chapter, shall, upon conviction thereof, be punished by a fine of not more than five hundred, nor less than one hundred dollars.

## CHAPTER CLXXXIII.

### PROPERTY RIGHTS OF MARRIED PERSONS.

SECTION

2396. Marriage not a disqualification.
2397. Husband and wife must prove good faith of transaction, if questioned.
2398. Wife, no greater civil disabilities than husband.
2399. Parental control and responsibility co-equal
2400. Separate property of wife defined.
2401. Each may sue the other for detention of separate property.
2402. Damages may be recovered of married woman, for injuries committed.
2403. Each may constitute the other attorney.
2404. Wife entitled to her earnings, for which may sue alone
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2406. Wife may contract same as if unmarried.
2407. Property of both or either chargeable for education of children.

SECTION

2408. Separate property of husband defined.
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2410. Community real estate subject to community debts, liens, etc.
2411. Right of survivors as to community property.
2412. Descent of intestate's interest in community property.
2413. Earnings of wife and certain minor children, wife's separate property.
2414. Curtesy and dower not allotted.
2415. As to selection of homestead.
2416. Disposition of property rights may be regulated by agreement.
2417. Rule of construction.
2418. Shall not operate retroactively.

Sec. 2396. Every married person shall hereafter have the same right and liberty to acquire, hold, enjoy and dispose of every species of property, and to sue and be sued, as if he or she were unmarried.

Sec. 2397. In every case, where any question arises as to the good faith of any transaction between husband and wife, whether a transaction between them directly or by intervention of third person or persons, the burden of proof shall be upon the party asserting the good faith.

Sec. 2398. All laws which impose or recognize civil disabilities upon a wife, which are not imposed or recognized as existing as to the husband, are hereby abolished, and for any unjust unsurpation of her natural or property rights, she shall have the same right to appeal in her own individual name, to the courts of law or equity for redress and protection that the husband has: *Provided, always*, That nothing in this chapter shall be construed to confer upon the wife any right to vote or hold office, except as otherwise provided by law.

Sec. 2399. Henceforth the rights and responsibilities of the parents in the absence of misconduct shall be equal, and the mother shall be as fully entitled to the custody, control and earnings of the children as the father, and in case of the father's death, the mother shall come into as full and complete control of the children and their estate as the father does in case of the mother's death.

Sec. 2400. The property and pecuniary rights of every married woman at the time of her marriage or afterwards acquired by gift, devise or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of her husband, and she may manage, lease, sell, convey, encumber or devise by will such property to the same extent and in the same manner that her husband can, property belonging to him.

Sec. 2401. Should either husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried.

Sec. 2402. For all injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be responsible therefor, except in case where he would be jointly responsible with her if the marriage did not exist.

Sec. 2403. A husband or wife may constitute the other his or her attorney in fact to manage, control or dispose of his or her property with the same power of revocation or substitution as could be exercised were they unmarried persons.

Sec. 2404. A wife may receive the wages of her personal labor, and maintain an action therefor in her own name and hold the same in her own right, and she may prosecute and defend all actions at law for the preservation and protection of her rights and property as if unmarried.

Sec. 2405. Neither husband or wife is liable for the debts or liabilities of the other incurred before marriage, nor for the separate debts of each other, nor is the rent or income of the separate property of either liable for the separate debts of the other.

Sec. 2406. Contracts may be made by a wife and liabilities incurred, and the same may be enforced by or against her to the same extent and in the same manner as if she were unmarried.

Sec. 2407. The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

Sec. 2408. Property and pecuniary rights owned by the husband before marriage, and that acquired by him afterwards by gift, bequest, devise or descent, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his wife, and he may manage, lease, sell, convey, encumber or devise by will such property without the wife joining in such management, alienation or encumbrance, as fully and to the same effect as though he were unmarried.

Sec. 2409. Property not acquired or owned, as prescribed in sections 2400 and 2408 acquired after marriage by either husband or wife or both, is community property. The husband shall have the management and control of community personal property, with a like power of disposition as he has of his separate personal property, except he shall not devise by will more than one-half thereof.

Sec. 2410. The husband has the management and control of the community real property, but he shall not sell, convey or encumber, the community real estate, unless the wife join with him in executing the deed or other instrument of conveyance by which the real estate is sold, conveyed or encumbered, and such deed or other instrument of conveyance must be acknowledged by him and his wife: *Provided, however*, That all such community real estate shall be subject to the liens of mechanics and others for labor and materials furnished in erecting structures and improvements thereon as provided by law in other cases, to liens of judgments recovered for community debts, and to sale on execution issued thereon.

Sec. 2411. Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the decased husband or wife, subject also to the community debts.

Sec. 2412. In case no testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property, it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living or none of their representatives living, then the said community property shall all pass to the survivor, to the exclusion of collateral heirs, subject to the community debts, the family allowance and the charges and expenses of administration.

Sec. 2413. The earnings and accumulations of the wife and of her minor children living with her, or in her custody while she is living separate from her husband, are the separate property of the wife.

Sec. 2414. No estate is allowed the husband as tenant by curtesy, upon the death of his wife, nor is any estate in dower allotted to the wife, upon the death of her husband.

Sec. 2415. The husband cannot select a homestead from the separate property of the wife, nor the wife from the separate property of the husband, but either may select and hold a homestead from his or her separate property, and the husband may select a homestead from the community property. But if the husband neglect or refuse to select such homestead then the wife may select the same: *Provided*, That but one homestead shall be selected or held by husband or wife, and it must embrace the dwelling house in which one or both of them reside.

Sec. 2416. Nothing contained in any of the provisions of this chapter or in any law of this territory, shall prevent the husband and wife from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, then owned by them or afterwards to be acquired, to take effect upon the death of either. But such agreement may be made at any time by the husband and wife by the execution of an instrument in writing under their hands and seals, and to be witnessed, acknowledged and certified in the same manner as deeds to real estate are required to be, under the laws of the territory, and the same may at any time thereafter be altered or amended in the same manner: *Provided, however*, That such agreement shall not derogate from the right of creditors, nor be construed to curtail the powers of the district court to set aside or cancel such agreement for fraud or under some other recognized head of equity jurisdiction, at the suit of either party.

SEC. 2417. The rule of common law that statutes in derogation thereof are to be strictly construed has no application to this chapter. This chapter establishes the law of this territory respecting the subject to which it relates, and its provisions and all proceedings under it shall be liberally construed with a view to effect its object.

SEC. 2418. This chapter shall not be construed to operate retrospectively and any right established, accrued or accruing or in any thing done prior to the time this chapter goes into effect shall be governed by the law in force at the time such right was established or accrued.

## CHAPTER CLXXXIV.

### PERMITTING ALIENS TO ACQUIRE, HOLD AND DISPOSE OF REAL ESTATE, AND TO BUILD, LEASE, OR PURCHASE RAILROADS, TRAMWAYS AND BRIDGES.

SECTION
2419. Aliens may purchase, and hold land, like citizens.
SECTION
2420. May acquire railroads, etc., and operate same.

SEC. 2419. Any alien may acquire and hold lands, or any right thereto or interest therein by purchase, devise, or descent, and he may convey, mortgage and devise the same, and if he shall die intestate the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged, or devised, or shall descend in like manner and with like effect as if such alien were a citizen of this territory or of the United States.

SEC. 2420. That any alien, whether a resident of this territory or not, shall be and is hereby permitted to construct, build, equip, lease, use, sell, hold and dispose of, or acquire by purchase, or otherwise, any railroad, tramway, or bridge, in this territory, and shall be, and is hereby allowed to work, and operate the same, to acquire and hold lands in connection therewith, to mortgage the same or said railroad, tramway or bridge, and to transact the business, collect and receive tolls, hold, use, and dispose of the franchise and rights of any such railroad, tramway, or bridge, with the same powers and privileges in all respects as now, or may hereafter belong to citizens of this territory.

## CHAPTER CLXXXV.

### FORMATION OF CORPORATIONS.

SECTION
2421. Purposes for which may be formed.
2422. Two or more may incorporate; certificate of
2423. Copy of certificate; evidence.
2424. Powers of.
2425. Trustees, stock election of trustees.
SECTION
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SECTION
2431. Representative may vote as stockholder.
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2435. Representative holding stock not personally liable.
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2441. Powers and duties of trustees on dissolution.
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2445. Heretofore formed, declared valid.
2446. Special provisions as to stock of mining.
2447. Water companies included.
2448. Appropriation of lands by water companies.
2449. Water companies hereafter incorporating to secure municipal franchise first.

SEC. 2421. Corporations for manufacturing, mining, milling, wharfing and docking, mechanical, mercantile, building and farming purposes, or for the building, equipping and managing water flumes, for the transportation of wood and lumber, or for the purpose of building, equipping and running railroads, or engaging in any other species of trade or business, may be formed according to the provisions of this chapter; such corporations and the members thereof being subject to all the conditions and liabilities herein imposed, and to none others.

SEC. 2422. Any two or more persons, who may desire to form a company for one or more of the purposes specified in the preceding section, shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take the acknowledgment of deeds, and file one of such articles in the office of the secretary of the territory, and another in the office of the county auditor of the county in which the principal place of business of the company is intended to be located, and retain the third in the possession of the corporation. Said articles shall state the corporate name of the company, the object for which the same shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the capital stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for such length of time (not less than two, nor more than six months), as may be designated in such certificate, and the name of the city, town or locality and county in which the principal place of business of the company is to be located. Amendments may be made to the articles of incorporation, by supplemental articles, executed and filed the same as the original articles.

SEC. 2423. A copy of any certificate of incorporation filed in pursuance of this chapter and certified by the auditor of the county in which it is filed, or his deputy, or by the secretary of the territory, shall be received in all the courts and places as prima facie evidence of the facts therein stated.

SEC. 2424. When the certificate shall have been filed the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and shall have power:

1. To sue and be sued in any court having competent jurisdiction.

2. To make and use a common seal and to alter the same at pleasure.

3. To purchase, hold, mortgage, sell and convey real and personal property.

4. To appoint such officers, agents, and servants as the business of the corporation shall require; to define their powers, prescribe their duties, and fix their compensation.

5. To require of them such security as may be thought proper for the fulfilment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two thirds of the stockholders as hereinafter provided.

6. To make by-laws not inconsistent with the organic act of this territory, and the laws of the congress of the United States, and of this territory.

7. The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company, as expressed in the articles of incorporation.

Sec. 2425. The corporate powers of the corporation shall be exercised by a board of not less than two trustees, who shall be stockholders in the company, and a majority of them citizens of the United States and residents of this territory, who shall, before entering upon the duties of their office, respectively take and subscribe to an oath, as prescribed by the laws of this territory, and who shall after the expiration of the term of the trustees first elected, be actually elected by the stockholders, at such time and place within this territory, and upon such notice and in such manner as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he may own or represent by proxy shares of stock, and the person or persons receiving the greatest number of votes shall be trustee or trustees: *Provided*, That nothing herein contained shall prevent any corporation by their by-laws limiting such bona fide shareholder to a single vote, or one vote for every full share of paid-up stock, or its equivalent in assessable stock, disregarding the number of shares of stock he may own. It shall be competent at any time for two thirds of the stockholders of any corporation organized under this chapter to expel any trustee from office and to elect another to succeed him. In all cases where a meeting of the stockholders is called for the purpose of expelling a trustee and electing his successor, such notice shall be given of the meeting as the by-laws of the company may require. Whenever any vacancy shall happen among the trustees by death, resignation, or otherwise, except by removal and the election of his successor as herein provided, it shall be filled by appointment of the board of trustees.

Sec. 2426. If it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of the company the corporation shall not for that reason be dissolved; but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for in the by-laws of the company, and all acts of the trustees shall be valid and binding upon the company until their successors are elected and qualified.

Sec. 2427. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

Sec. 2428. The first meeting of the trustees shall be called by a notice signed by one or more persons named as trustees in the certificate, setting forth the time and place of the meeting, which notice shall be delivered personally to each trustee, or published at least twenty days in some newspaper in the county in which the principal place of business of the corporation, or if no newspaper is published in the county, then in some newspaper nearest thereto in the territory.

Sec. 2429. The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid except between the parties thereto, until the same shall have been entered upon the books of the company, so as to show the names of the parties, by and to whom transferred, the numbers and designation of the shares and the date of the transfer.

Sec. 2430. The stockholders of any corporation formed under this chapter may in the by-laws of the company prescribe the times, manner and amounts in which payments of the sums subscribed by them respectively shall be made; but in case the same shall not be so prescribed, the trustees shall have the power to demand and call in from the stockholders the sums by them subscribed, at such time and in such manner, payments or installments, as they may deem proper. In all cases notice of each assesment shall be given to the stockholders personally, or by publication in some newspaper published in the county in which the principal place of business of the company is located; and if none be published in such county, then in the newspaper nearest to said principal place of business in the territory. If after such notice has been given any stockholder shall make default in the payment of assessments upon the shares held by him, so many of said shares may be sold as will be necessary for the payment of the assessment upon all the shares held by him, her or them. The sale of said shares shall be made as prescribed in the by-laws of the company, but shall in no case be made at the office of the company. No sale shall be made except at public auction, to the highest bidder, after a notice of four weeks, published as above directed in this section, and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale for the smallest number of shares or portion of a share as the case may be, shall be deemed the highest bidder.

Sec. 2431. Whenever any stock is held by a person as executor, administrator, guardian or trustee, he shall represent such stock at all meetings of the company and may vote accordingly as a stockholder.

Sec. 2432. Any stockholder may pledge his stock by a delivery of the certificate or other evidence of his interest, but may, nevertheless, represent the same at all meetings and vote as a stockholder.

Sec. 2433. It shall not be lawful for the trustees to make any dividend except from the net profits arising from the business of the corporation, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company, nor to reduce the capital stock of the company unless in the manner prescribed in this chapter, or the articles of incorporation or by-laws; and in case of any violation of the provisions of this section, the trustees, under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, or were not present when the same did happen, shall, in their individual or private capacities, be jointly or severally liable to the corporation and the creditors thereof in the event of its dissolution, to the full amount so divided, or reduced, or paid out: *Provided*, That this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain after the payment of all its debts upon the dissolution of the corporation or the expiration of its charter.

Sec 2434. No corporation organized under this chapter shall, by any implication or construction, be deemed to possess the power of issuing bills, notes or other evidence of debt for circulation as money, except bonds by railroad companies, which shall at no time exceed double the amount of paid up stock issued by said company. Each and every stockholder shall be personally liable to the creditors of the company to the amount of what remains unpaid upon his subscription to the capital stock and not otherwise.

Sec. 2435. No person holding stock as executor, administrator, guardian or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stock holder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder, and the estate and funds in the hands of the executor, administrator or guardian or trustee shall be liable in like manner and to the same extent as the testator, or intestate, or the ward or person interested in the trust fund would have been if he or she had been living and competent to act and hold the stock in his or her name.

Sec. 2436. It shall be the duty of the trustees of every company incorporated under this chapter, to keep a book containing the names of all persons, alphabetically arranged, who are or shall be stockholders of the corporation and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares, which book, during the usual business hours of the day, on every day excepting Sunday and the legal holidays, shall be open for the inspection of stockholders and creditors of the company at the office or principal place of business of the company; and any stock-holder or creditor of the company shall have the right to make extract from such book, or to demand and receive from the clerk or other officer having the charge of such book, a certified copy of any entry therein, or to demand and receive from any clerk or officer a certified copy of any paper placed on file in the office of the company, and such book and certified copy shall be presumptive evidence of the fact therein stated in any action or proceeding against the company or any one or more of the stockholders.

Sec. 2437. If at any time the clerk or other officer having charge of such book shall make any false entry or neglect to make any proper entry therein, or having the charge of any papers of the company shall refuse or neglect to exhibit the same or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the injured party a penalty of not less than one hundred dollars nor more than one thousand dollars and all damages resulting therefrom, to be recovered in any action of debt in any court having competent jurisdiction; and for neglecting to keep such book for inspection as aforesaid, the corporation shall forfeit to the people the sum of one hundred dollars for every day it shall so neglect, to be sued for and recovered in the name of the people in the district or probate court of the county in which the principal place of business of the corporation is located.

SEC. 2438. Any company incorporated under this chapter may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital.

SEC. 2439. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called by a notice signed by at least a majority of the trustees, and published at least eight weeks in some newspaper published in the county where the principal place of business of the company is located; or if no newspaper is published in the county, then the newspaper nearest thereto in the territory, which notice shall specify the object of the meeting the time and place where it is to be held. and the amount to which it is proposed to increase or diminish the capital, and a vote of two-thirds of all the shares of the stock shall be necessary to increase or diminish the amount of capital stock.

SEC. 2440. If at a meeting so called a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out and signed and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the trustees, and filed as required by the section 2422 and when so filed the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

SEC. 2441. Upon the dissolution of any corporation formed under the provisions of this chapter the trustees at the time of the dissolution shall be trustees of the creditors and stock holders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation by the name of the trustees of such corporation, collect and pay the outstanding debts, settle all its affairs and divide among the stock holders the money and other property that shall remain after the payment of the debts and necessary expenses.

SEC. 2442. Any corporation formed under this chapter may dissolve and disincorporate itself by presenting to the district judge of the judicial district in which the office of the company is located, a petition to that effect, accompanied by a certificate of its proper officers and setting forth that at a meeting of the stock holders called for the purpose, it was decided by a vote of two-thirds of all the stock holders to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the territory. At the time and place appointed, or at any other time to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the corporation has taken necessary preliminary steps and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

SEC. 2443. All corporations now existing or hereafter formed under the laws of other states and territories for the conducting and transaction of marine, life, or fire insurance business, with an authorized agent residing in and having an office in this territory, shall have ample power to do and transact such insurance business within this territory, not inconsistent with the organic act of this territory, with ample power by their corporate name and style to enjoy all such rights not inconsistent with the organic act as aforesaid, and to maintain and defend the same in any court or place within this territory as fully as though said companies were domestic corporations, incorporated by and in accordance with the laws of this territory.

SEC. 2444. Any corporation desiring at any time to remove its principal place of business into some other county in the territory, shall file in the office of the county auditor a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town, or locality within the same county, publication shall be made of such removal at least once a week for four weeks in the newspaper published nearest to the city, town or locality from which the principal place of business of such corporation is desired to be removed. The formation or corporate acts of any corporation hereafter formed under this chapter shall not be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation: *Provided*, That within three months from the passage of this chapter, such corporation shall cause publication to be made once a week for at least four weeks in the newspaper published nearest the city, town, or locality, and where the principal place of business of such corporation has been in fact located, designating the city, town, or locality and county where its principal place of business shall be located. On compliance with the provisions of this section in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established, or removed at or to any designated city, town or locality, and county in the territory.

SEC. 2445. All persons who have organized themselves as a corporation under the provisions of this chapter for purposes other than those enumerated in section 2421, are hereby declared incorporate bodies, with all the powers the same as they would enjoy had they been incorporated for the purposes set forth in said section 2421.

SEC. 2446. In incorporations already formed, or which may hereafter be formed under this chapter, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this territory, for the working and development of which such corporation shall be or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its by-laws will represent the value of so much of his interest in said mining claim, the legal title to which he may by deed, deed of trust or other instrument vest, or have vested in such corporation for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied by the board of trustees of such corporation be affected by the reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section: *Provided*, That the greater portion of said amount of capital stock shall have been so subscribed: *And, provided further*, That this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed, for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-laws or express contract.

SEC. 2447. The provisions of this chapter shall extend to and apply to all associations already formed under any law of this territory, or hereafter to be formed under the provisions of this act, for the purpose of supplying any cities or towns in this territory, or the inhabitants thereof with pure and fresh water.

SEC. 2448. Such water companies incorporated for the purposes specified in the preceding section shall have the right to purchase or take possession of and use and hold such lands and waters for the purposes of the company, lying without the limits of the city or town intended to be supplied with water upon making compensation therefor. The mode of proceeding to obtain possession of such lands for the use of the company, right of way for laying pipes and aqueducts for the use of the company, when the parties cannot agree shall so far as the same be applicable be as prescribed in chapters 182 and 183.

SEC. 2449. Water companies hereafter incorporating under the provisions of this chapter must first obtain from the corporate authorities of a city or town intended to be supplied with water, the right or privilege so to do; but nothing herein contained shall affect parties now acting under legislative grants or franchises.

## CHAPTER CLXXXVI.

### THE INCORPORATION OF COLLEGES, SEMINARIES, CHURCHES, LYCEUMS, LIBRARIES AND OTHER SOCIETIES FOR BENEVOLENT, TEMPERANCE, CHARITABLE AND SCIENTIFIC PURPOSES.

SECTION.
2450. Two or more persons may incorporate; mode.
2451. Powers of.
2452. Of masonic and other lodges; method.
SECTION.
2453. Colleges and seminaries may confer degrees.
3454. Dissolution of.

SEC. 2450. Any two or more persons desirous of forming a corporation for a college, seminary, church, library, or benevolent, temperance, charitable or scientific society, shall adopt articles certifying:

1. The names of the persons concerned, and their having associated to form a body politic.
2. The corporate name and location and chief place of business.
3. If a joint stock company, the amount of capital stock and the

amount constituting a share; if not a joint stock company, then the terms of admission to membership.

4. A full and specific statement of their object and purpose.

5. What officers the society and company will have; by what officers business will be conducted, and when they are to be elected, or if appointed, when and by whom such appointments are to be made; and also the number of trustees to manage the affairs of said society, and the names of the trustees for the first year of its existence, which articles shall be subscribed and sworn to by them, or by their president or secretary and a majority of such associates, before some officer authorized to administer oaths, and filed and recorded in the office of the auditor of the county where such corporation or its chief place of business shall exist and a copy thereof certified to by the auditor shall be filed in the office of the secretary of the territory.

SEC. 2451. When such articles shall have been filed as aforesaid, the persons who shall have signed and verified the same, and their successors, shall be a body politic and corporate, with perpetual succession; they shall be capable in law of suing and being sued, pleading and being impleaded, answering and being answered in all the courts of the territory; they may have a common seal, alter and change the same at pleasure; acquire, mortgage and sell property, personal and real, for the purpose of carrying out the objects of the corporation, and make by-laws, rules and regulations as they deem proper and best for the welfare and the good order of the corporation: *Provided*, That such by-laws, rules and regulations be not contrary to the constitution and laws of the United States and the existing laws of the territory.

SEC. 2452. Any lodge of Free and Accepted Masons, Odd Fellows, Good Templars or other charitable or beneficial society desiring hereafter to incorporate, may avail themselves of the provisions of this chapter by filing in the office of the secretary of the territory of Washington and in the office of the county auditor of the county wherein such lodge or other society holds its meetings of business or communications a certificate or article embodying:

1. The name of such lodge or other society and place of holding its meetings.

2. What elective officers the lodge or society will have and when such officers shall be elected; how and by whom the business of the lodge or society shall be conducted or managed, and what officers shall join in the execution of any contract by such to give it force and effect in accordance with the usages of such lodge or society; such articles shall be subscribed by the master or other chief officer of said lodge or society, with the title accorded to him by usage of such lodge or society, attested by the secretary, with the seal of such lodge or society.

3. A copy of the by-laws of such lodge or society shall also be filed in the said office of the secretary of the territory and county auditor of the proper county.

4. The names of all such officers at the time of filing the application and the time for which they may be respectively elected. When such articles shall be filed such lodge or society shall be a body politic and corporate, with all the incidents of a corporation, subject, *nevertheless*, to the laws

and parts of laws now in force or hereafter to be passed regulating corporations.

Sec. 2453. That any college or seminary hereafter incorporated by the provisions of this chapter shall have power, and is hereby invested with authority to confer the degrees usually conferred by such institutions.

Sec. 2454. Any corporation desiring its dissolution may, by a three-fourths vote of all its members at some regular meeting, execute a surrender of all its corporate powers, and upon the filing of duplicate surrenders with the said auditor and territorial secretary, the said corporation shall be dissolved to all intents and purposes.

## CHAPTER CLXXXVII.

### CORPORATIONS WHEN AUTHORIZED TO APPROPRIATE LAND FOR CORPORATE PURPOSES.

Section
2455. May enter upon private land for survey, etc.
2456. Amount of land which may be appropriated; purpose and measure of compensation
2457. May change grade or location of road or canal.
2458. May appropriate public road, street, alley or public grounds.
2459. Authorities to designate location of corporation road.
2460. When corporation may erect toll-gates and charge toll.
2461. Of clearing, cutting; width of road, track, etc.
2462. Streams to be bridged or ferries maintained.
2463. Roads other than railroads a public highway; when.
2464. Of the charge and collection of toll.
Section
2465. Penalty for refusal to pay toll, or for overcharging toll.
2466. Bridge of; when a common highway.
2467. Toll for crossing brides. when; penalty for non payment or overcharging.
2468. Railroad corporations common carriers; may fix own rate, etc.
2469. To keep account of cost, expenses and tolls and file with auditor.
2470. How toll-road or bridge may be declared free by county commissioners.
2471. County may purchase any road or bridge.
2472. Erecting flumes or acqueduts have same privileges, etc.

Sec. 2455. A corporation organized for the construction of any railroad, macadamized road, plank road, clay road, canal or bridge, shall have a right to enter upon any land between the termini thereof for the purpose of examining, locating and surveying the line of such road or canal, or the site of such bridge, doing no unnecessary damage thereby.

Sec. 2456. Such corporation may appropriate so much of said land as may be necessary for the line of such road or canal, or the site of such bridge, not exceeding two hundred feet in width, besides a sufficient quantity thereof for toll-houses, work-shops, materials for construction, a right of way over adjacent lands to enable such corporation to construct and repair its road, canal, or bridge, and to make proper drains; and in the case of a railroad, to appropriate sufficient quantity of such lands, in addition to that before specified in this section, for the necessary side tracks, depots, and water stations, and the right to conduct water thereto by aqueduct; compensation therefor to be made to the owner thereof, irrespective of any increased value thereof by reason of the proposed improvement by such corporation in the manner hereinafter provided: *And, provided further*, That if such corporation locate the bed of such railroad, or canal upon any portion of the tract, now occupied by any established territorial, or county road, said corporation shall be responsible to the county commissioners of said county or counties in which said territorial, or county road so appropriated is located for all expenses incurred by said county or counties in re-locating and opening the portion of said road so appropriated..

Sec. 2457. Any corporation may change the grade or location of its road, or canal, not departing from the general route specified in the articles of incorporation, for the purpose of avoiding annoyances to public travel or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes, and for the accomplishment of such change, shall have the same right to enter upon, examine, survey and appropriate the necessary lands and materials, as in the original location and construction of such road or canal.

SEC. 2458. When it shall be necessary or convenient in the location of any road herein mentioned to appropriate any part of any public road, street or alley or public grounds, the county court of the county wherein such road, street, alley or public grounds may be, unless the same be within the corporate limits of a municipal corporation, is authorized to agree with the corporation constructing the road, upon the extent, terms and conditions upon which the same may be appropriated or used, and occupied by such corporation, and if such parties shall be unable to agree thereon, such corporation may appropriate so much thereof as may be necessary and convenient, in the location and construction of said road.

SEC. 2459. Whenever a private corporation is authorized to appropriate any public highway or grounds, as mentioned in the last section, if the same be within the limits of any town, whether incorporated or not, such corporation shall locate their road upon such particular road, street or alley, or public grounds. within such town, as the local authorities mentioned in the last section and having charge thereof, shall designate; but if such local authorities shall fail or refuse to make such designation within a reasonable time, when requested, such corporation may make such appropriation without reference thereto.

SEC. 2460. Whenever such public highway or grounds are taken by a private corporation by agreement with the local authorities mentioned in section 2459, such corporation may place such gates thereon, and charge and receive such tolls thereat, as such local authorities may consent to by such agreement, and none other; but when the same is appropriated without such agreement, as provided in said section, such corporation shall not place any gate or other obstruction upon the public highway, or grounds appropriated, nor charge or receive any toll from any person passing over or along the same.

SEC. 2461. Any road other than a railroad. constructed by a corporation formed under this chapter, shall be cleared of standing timber for thirty feet in width of said road, and shall have a track in the center not less than sixteen feet wide, finished and kept in good traveling condition, except when the cutting on said road is six feet or more deep on either side, in which case such track need not be more than ten feet wide, with turnouts of sixteen feet in width for every quarter of a mile of such narrow track.

SEC. 2462. All streams or other waters upon the line of such roads, shall be safely and securely bridged, except where the county court of the county wherein the line of such road may cross such streams or other waters, or if such stream or other water form the boundary between two counties, then the county court of either of said counties may authorize the corporation to place a ferry boat upon such stream or other water, to be kept and run for such toll as the county court may prescribe, and in the manner required of ferries established under the general statutes in relation to ferries; or except where such county court may authorize such corporation to connect their road with a ferry now or hereafter established over such stream or other water, under the general statute in relation to ferries.

Sec. 2463. Whenever a road of any kind herein mentioned, other than a railroad, is completed, or any particular section of it, fit for public travel, the corporation shall give notice thereof, by publication in some newspaper of general circulation, along the line of such road or section, or by posting notices along such line in some conspicuous places, not less than five miles apart; and thereafter such road or section thereof is a common highway, so that every person with his stock and vehicles of every description may travel thereon upon the payment of the tolls prescribed by the corporation, subject to the power of the corporation, by giving notice thereof in like manner, to suspend such right of travel upon all or any portion of such road, for a reasonable time, to enable it to make any necessary repairs or improvements thereon.

Sec. 2464. A corporation other than railroad shall only collect and receive toll on its road at a gate established thereon, and such shall be plainly and specifically printed or written upon a signboard, posted at such gate, in plain view of the travel on the road; but such corporation shall not establish any gate within the limits of any town, whether incorporated or not, or within one-half mile of the limits of such town, except as specially provided in section 2460; but no person, traveling on foot, or going in any manner or within any property, from one part of his farm to another part, or going to or from church, funerals or elections, is liable to pay for traveling upon such roads.

Sec. 2465. Any person traveling upon any road herein mentioned, who shall pass through a gate thereon without paying the toll legally chargeable thereat, or who shall go round such gate with the intent to avoid the payment of such toll, shall be liable to the corporation for three times the amount thereof, and any corporation, which by its agents or servants, or in any manner, shall illegally collect any toll from any person traveling on such road, shall be liable to such person for three times the amount thereof.

Sec. 2466. Any bridge constructed by a corporation formed under this chapter, when completed and fit for public travel, and notice thereof is posted in some conspicuous place on such bridge, or by publication in some newspaper, as in the case of a road, is a common highway, within the meaning and subject to the conditions specified in section 2463, as to roads, and subject to the further power of the corporation to prescribe, by advertisement in some conspicuous place on such bridge, the rate of speed any one may travel on such bridge.

Sec. 2467. A corporation may collect and receive such tolls for crossing its bridge, as may be plainly written or printed upon a signboard, posted in some conspicuous place on such bridge, but no person not liable to pay toll on a road, as provided in section 2464, is liable to pay toll for crossing such bridge; and any person who shall pass over such bridge without paying the toll legally chargeable thereat, or any corporation which shall illegally collect any toll from any person crossing such bridge, shall be respectively liable to each other for three times the amount of such toll, as provided in section 2465, in case of roads.

SEC. 2468. Every corporation formed under this chapter, for the construction of railroad, as to such roads shall be deemed common carriers, and shall have power to collect and receive such tolls or freights for transportation of persons or property thereon as it may prescribe.

SEC. 2469. It shall be the duty of every incorporation organized for the construction of any macadamized road, plank road, clay road, or bridge, to keep an accurate statement on account of the moneys expended by said corporation, in the construction of any such road or bridge and keeping the same in repair, including any sums paid for lands, appropriated as necessary for said corporation, which statement or account shall be verified at the time of the annual meeting held for the election of directors, by the president of the said corporation, or one of the directors thereof to the effect that he believes the said account to be just and correct, and a copy of such verified account shall, within ten days after such annual election, be deposited with the auditor of the county with whom the articles of incorporation are filed. Said incorporation shall also keep an accurate account of the tolls received for traveling upon said road or bridge, or of other profits accruing to said corporation, which accounts shall be verified in like manner, and a copy thereof deposited with said county auditor within ten days after such annual election.

SEC. 2470. At any time after the expiration of ten years from the time of taking tolls on any macadamized road, plank road, clay road, or bridge, it shall be lawful for the county court of any county through which any such road, or part thereof, shall pass or in which said bridge may be situated, to pay to such corporation the amount of money expended by it in the construction of such road or bridge, and keeping the same in repair, and all other necessary expenses, including any sums paid for lands appropriated by such corporation together with interest on said account, and sums of money, at the rate of twenty per centum per annum, after deducting from said amount the tolls and other profits annually received by said corporation, and after the payment of the amounts expended in constructing and keeping in repairs said road or bridge, and other necessary expenses incurred in and about the same and interest thereon, less the amount received by such corporation, the said road or bridge shall become free for public travel.

SEC. 2471. The foregoing section shall not be construed to prohibit said county court, at any time before the expiration of said period of ten years, from purchasing said road or bridge, for any sum that may be agreed upon by said county court and corporation.

*SEC. 2472. All corporations, authorized to do business in the territory,* and who have been, or may hereafter be organized, for the purpose of erecting and maintaining flumes and aqueducts to convey water for consumption or for mining, irrigation, milling or other industrial purposes, shall have the same right to appropriate lands for necessary corporate purposes, and under the same regulations and instructions as are provided for other corporations; and such corporations organized for such purposes, in order to carry out the object of their incorporation, are authorized to take and use any water not otherwise legally appropriated.

# CHAPTER CLXXXVIII.

## MODE OF PROCEEDING TO APPROPRIATE LANDS BY PRIVATE CORPORATIONS.

| SECTION | SECTION |
|---|---|
| 2473. Procedure where parties fail to agree on compensation. | 2476. Right of appeal to supreme court allowed. |
| 2474. On payment of awarded damages, right inures. | 2477. Decree shall include description of land and damages. |
| 2475. Affirmance of award by district court. | |

SEC. 2473. Whenever any corporation, authorized to appropriate lands for the right of way, is unable to agree with the owner thereof as to the compensation to be paid therefor, either such corporation or the owner of such land may by petition in which the land sought to be appropriated shall be described with reasonable certainty, apply to a justice of the peace in and for the county where said land lies, who shall thereupon summon three disinterested house-holders of such county to appear before him upon a certain day, not less than five nor more than fifteen days from the date of the filing of such petition, which said summons shall be served upon said house-holders and the opposite party as other processes before justices of the peace, at least three days before the return day thereof, and the house-holders so summoned, after being sworn faithfully and impartially to examine the ground which shall be pointed out to them by such corporation or person, or both, and described in the petition, shall assess the damages which they believe such owner or owners will sustain over and above the additional value which the owners of adjoining land will derive from the construction of such road, canal, or other work; and make two written reports, signed by at least a majority of them, one of which shall be delivered to the corporation or person presenting such petition, and the other to the justice of the peace.

SEC. 2474. Upon the payment, to such justice for the use of the owners, or to the owners of such lands, of the damages assessed by said householders or a majority thereof, said corporation shall have the right to appropriate the land in question to its own use for corporate purposes, subject to the action of the district court in regard to damages as hereinafter provided: *Provided*, That nothing herein contained shall be construed to prevent such corporation from going upon such lands for the purpose of preliminary surveys and explorations, and laying out the road or work.

SEC. 2475. That said justice shall within twenty days after the filing of such report of said householders, make out a certified copy thereof and file the same with the clerk of the district court of the district or sub district in which the land lies, who shall put the case upon the trial docket of the next term. The petitioner to be plaintiff and the other party defendant, and thereupon, if no objection is made within ten days by either party the same shall stand confirmed, and judgment be entered accordingly; but either or both parties may elect to have said cause tried, and the parties then shall be at liberty to file the ordinary pleadings in a civil action or such special proceedings as the court may allow; and the issues thus formed shall be tried as in other civil cases, the costs to be taxed against the corporation only when the verdict and judgment is for a larger amount than was awarded by the householders, or the cause has been tried at the instance of such corporation for the purpose of reducing the amount of damages, and the damages are not so reduced; otherwise the costs shall be taxed against the owner of the land.

SEC. 2476. Either party may appeal to the supreme court of the territory as in other cases: *Provided*, That if the owner of the land accepts the sum awarded by the householders he shall be deemed thereby to conclusively waive a trial in the district court and appeal to the supreme court, and final judgment by default may be rendered in the district court as in other cases.

SEC. 2477. The district court at the time of rendering judgment for damages, whether upon default or trial shall also enter up a judgment or decree of appropriation of the land or right of way in question, thereby vesting the legal title to the same in the corporation for corporate purposes.

## CHAPTER CLXXXIX.

### FOREIGN CORPORATIONS.

SECTION
2478. Formed in any state or territory of U. S., have same powers as domestic; when.
2479. Of foreign, including those of foreign countries.
2480 Charter and appointment of agent to be recorded.
2481. Appointment, powers and residence of agent.
SECTION
2482. Duty of assessors as to.
2483. Duty of county auditor in regard to.
2484. Fees for recording, etc.
2485. Penalty for agent of, violating this chapter.
2486. Penalty for neglect of duty by assessor.
2487. Acts of, heretofore are declared valid.

SEC. 2478. All corporations now existing or hereafter formed under the laws of other states or territories of the United States for the conducting and transacting of marine, life and fire insurance, or any other business not inconsistent with the organic law of this territory, shall have full power and authority to sue and be sued, hold, purchase and acquire, sell and dispose of real and personal property, and generally to do and perform any and every act, and transact business within this territory, in the same manner and to the same extent as though such corporation had been organized under the laws of this territory: *Provided*, That any such corporation hereafter acquiring property, or transacting business as aforesaid, shall first comply with the provisions of this chapter.

SEC. 2479. Any corporation, incorporated under the laws of any state in the United States, or of any foreign country, state or colony, may acquire, hold, use and dispose of, in the corporate name, all real estate necessary or convenient to carry into effect the objects of its incorporation and the transaction of its business, and also any interest in real estate, by mortgage or otherwise, as security for moneys due to, or loans made by such foreign corporation, in this territory, either prior to or after the passage of this act: *Provided*, Such corporation shall file in the office of the secretary of the territory a certified copy of its charter, or a certified copy of its certificate of incorporation.

SEC. 2480. Such corporation shall file and record or cause to be filed and recorded in the office of the secretary of the territory an authenticated copy of its charter, act, certificate of articles of incorporation, and shall constitute and appoint an agent who shall reside at the place in the territory where the business of said corporation shall be carried on: *Provided*, That in case any such corporation should desire to carry on business in more than one place in this territory at one and the same time, then such corporation shall constitute and appoint an agent to reside at the principal place of business of such corporation, as herein provided.

SEC. 2481. Every foreign corporation who shall constitute and appoint an agent or agents to reside in any place or places in this territory, for the purpose of carrying on business in accordance with this act, shall file and record, or cause to be filed and recorded in the office of the secretary of the territory, a duly executed appointment of the agent appointed to to reside at the principal place of business of such corporation. Such appointment shall contain the name of the agent and his place of residence, and shall duly authorize such agent to accept service of process in any action or suit pertaining to the property, business or transactions of such corporation within this territory, in which such corporation may be a party, and shall continually have and keep some resident agent empowered, as aforesaid, during all of the time such corporation shall conduct and carry on business in this territory; and service of any process, pleading or other paper upon such agent shall be taken and held as due service on said corporation: *Provided*, *further*, That any agent or his place of business may from time to time be changed, upon the filing and recording in the office of the secretary of the territory a new appointment and notice of the change in the place of residence of such agent.

SEC. 2482. It shall be the duty of each and every county assessor in this territory to ascertain each and every year, at the time of the tax assessment of his county, the name of every foreign corporation doing business by agent or otherwise within his county, the nature of such business, and the name of the agent of each of such corporations, if any there be, together with such agent's place of address, and shall within ten days from and after the compilation of such assessment, make out and deliver to the county auditor of his county, a full and complete list of the names of such corporations doing business in his counties, together with the nature of the business so carried on by each of such corporations, and the name of the resident agent of each of such corporations, if any there be, and the place of residence of each of such agents.

SEC. 2483. It shall be the duty of each and every county auditor in this territory to make out and transmit to the secretary of the territory, within thirty days next preceding the receipt by him from such county assessor, the lists provided in section 2482, a full, true and concise statement of the names of such corporations, their place of business, the nature of business conducted by such corporations, together with the names of each and every agent of each of such corporations, if any there be, and the places of residence of such agents.

SEC. 2484. The fees for recording, under the provisions of this act, shall be the same as are allowed by law to the secretary of the territory, for certified copies of papers on file in his office.

SEC. 2485. Any agent of any foreign corporation, conducting or carrying on business within the limits of this territory, for and in the name of such corporation, contrary to any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail for a term not exceeding three months, or by both such fine and imprisonment.

SEC. 2486. Any county assessor failing to make out and deliver to the county auditor of his county a list within the time and in the manner provided in section 2485, and any county auditor failing to make out and transmit to the secretary of the territory a statement, within the time and in the manner provided in section 2482, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding three hundred dollars.

Sec. 2487. Nothing in this act shall be so construed as to render void anything heretofore done by any foreign corporation, not inconsistent with the organic law of this territory, but such acts shall remain valid as if the same had been done by corporations formed under the laws of this territory.

## CHAPTER CXC.

### CONCERNING FENCES.

Section
2488. Lawful fences.
2489. Other fences considered lawful.
2490. Damages may be recovered from owner of cattle breaking fences
2191. When persons owning adjoining lands shall pay half cost of fence.
2492. When partition fence must be erected
2393. Person refusing to build fence, may be charged one-half expense of building.

Section
2494. Partition fences to be kept in good repair.
2495. Fence built on land of another may be removed.
2496. When one half of fence may be removed.
2497. How value of partition fence shall be assessed.
2498. How value to be assessed upon trial.
2499. Owner of breachy cattle, when responsible.
2500. Need prove only that fence was lawful.

Sec. 2488. The following shall be considered lawful fences in this territory: Post and rail or plank fences, five feet high, made of sound posts five inches in diameter, set substantially in the ground, not more than ten feet apart, with four planks not less than one inch thick and six inches wide, securely fastened by nails or otherwise, said planks not more than nine inches apart. Post and rail fences, with posts not more than ten feet apart and rails not less than four inches wide (five of them) made in all other respects the same as the first described in this section. Worm fences made in the usual way, of sound, substantial rails or poles, five feet high, including riders with stakes firmly set in the ground and spaces no greater than in post and plank or rail fences, except the two lower spaces which shall not be more than four inches, and the top spaces between riders, not to be more than sixteen inches. Ditch and pole, or board or rail fence, shall be made of a ditch not less than four feet wide on top and three feet deep, embankment thrown up on the inside of the ditch, with substantial posts set in the embankment not more than ten feet apart, and a plank, pole, or rail securely fastened to said posts, at least seven feet high from the bottom of the ditch.

Sec. 2489. All other fences as strong and as well calculated to protect inclosures as either of those described in the preceding section shall be lawful fences.

Sec. 2490. Any person making and maintaining in good repair around his or her enclosure or enclosures, any fence such as is described in sections 2388 and 2489, may recover in a suit for trespass before the nearest court having competent jurisdiction, from the owner or owners of any animal or animals which shall break through such fence, in full for all damages sustained on account of such trespass, together with the costs of suits; and the animal or animals, so trespassing, may be taken and held as security for the payment of such damages and costs: *Provided*, That such person shall have such fences examined and the damages assessed by three reliable disinterested parties and practical farmers, within five days next after the trespass has been committed: *And, provided further*, That if before trial, the owner of such trespassing animal or animals, shall have tendered the person injured any costs which may have accrued, and also the amount in lieu of damages which shall equal or exceed the amount of damages afterwards awarded by the court or jury, and the person injured shall refuse the same and cause the trial to proceed, such person shall pay all costs and receive only the damages awarded.

Sec. 2491. When any fence has been or shall hereafter be erected by any person on the boundary line of his land, and the person owning the land adjoining thereto shall make or cause to be made an inclosure, so that such fence may also answer the purpose of inclosing his ground, he shall pay to the owner of such fence already erected, one-half the value of so much thereof as serves for a partition fence between them.

Sec. 2492. When two or more persons own land adjoining which is inclosed by one fence, and it becomes necessary for the protection of the interest of one party said partition fence should be made between them, the other or others, when notified thereof, shall erect or cause to be erected one-half of such partition fence, said fence to be erected on, or as near as practicable, the line of said land.

Sec. 2493. If, after notice has been given by either party and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected, the one-half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect by law one-half of the cost thereof from the other party.

Sec. 2494. The respective owners of adjoining inclosures shall keep up and maintain in good repair, all partition fences between such inclosures in equal shares, so long as they shall continue to occupy or improve the same.

Sec. 2495. When any person shall unwittingly or by mistake, erect any fence on the land of another, and when by a line legally determined that fact shall be ascertained, such person may enter upon the premises and remove such fence at any time within three months after such line has been run as aforesaid: *Provided*, That when the fence to be removed forms any part of a fence enclosing a field—of the other party having a crop thereon, such first person shall not remove such fence until such crop might, with reasonable diligence, have been gathered and secured, although more than three months may have elapsed since such division line was run.

Sec. 2496. When any party shall wish to lay open his inclosure, he shall notify any person owning adjoining inclosures, and if such person shall not pay to the party giving notice one-half the value of any partition fence between such enclosures, within three months after receiving such notice, the party giving notice may proceed to remove one-half of such fence, as provided in section 2495.

Sec. 2497. In assessing the value of any partition fence, the parties shall proceed as provided for the assessment of damages in section 2491.

Sec. 2498. Upon the trial of any cause occurring under the provisions of this chapter, the defendant may impeach any such assessment, and in that case the court or the jury shall determine the damages.

Sec. 2499. The owner of any animal that is unruly, and in the habit of breaking through or throwing down fences, if after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals, that may be in company with such animal.

[Sec. 2500. In case of actions for damages under this chapter, it shall be sufficient to prove that the fence was lawful when the break was made.]

## CHAPTER CXCI.

### CONSTRUCTION OF DITCHES, DRAINS OR WATER COURSES.

Section
2501. County commissioners authorized to establish.
2502. Notice to be given on application to county commissioners.
2503. Plat and survey of ditch to be recorded in auditor's office
2504. Duty of the county commissioners, on receipt of application
2505. Qualification of viewers.
2506. Duty of viewers.
2507. Viewers to make report.
2508. Parties interested must complete ditch; time allowed.
2509. Parties to dig ditch, or to pay expenses of so doing.
2509. Bond must be given by applicant before viewers are appointed.
2510. How ditches are kept in repair.
2511. Bridges to be constructed where ditch crosses public road.
2512. Persons aggrieved may appeal to justice of the peace.
2513. Proceedings of justice on appeal.
2514. No ditch or drain shall run into the Columbia river except consent be given by the owner of the land on the river.
2515. Sections 2510 and 2511 apply to ditches heretofore made.
2516. Provisions of this chapter not to apply to Walla Walla, Yakima, Whatcom, Stevens.

Sec. 2501. The county commissioners of any county in this territory, shall have power, at any regular meeting, to cause to be established, located and constructed as hereinafter provided, any ditch, drain or water course within such county.

Sec. 2502. Any person or persons owning or occupying swamp or overflowed lands in this territory, desiring to construct a ditch or ditches in order to improve the said lands, shall notify all persons through whose lands the said ditch or ditches are to be constructed, or which will be affected thereby, at least twenty days before any regular meeting of the board of county commissioners of the county or counties in which the same is to be constructed, at which the said application is to be made, by posting written or printed notices in three public places in the vicinity of such proposed ditch or ditches.

Sec. 2503. If any of the owners of the lands to be affected by the said ditch or ditches reside out of the county where the same is or are to be located, one copy of said notice shall be posted in a conspicuous place at the office of the auditor or auditors of the county or counties in which the proposed work is to be done, and one copy of the said notice, with the affidavit of the applicant or applicants, that the same has been posted as above provided shall be filed with the said county auditor, which he shall submit for the inspection of the county commissioners at the meeting at which said application shall be made, and the auditor shall thereupon enclose a copy thereof, and direct and mail the same to the postoffice of said owner, if the same is known to him. And it shall be necessary for the board of county commissioners in all other cases to have filed and recorded in the county auditor's office, in a book kept for that purpose, in the county where such ditch, drain or water course is constructed, a plat of the survey of said ditch, drain or water course, together with the notice and affidavit of the person or persons making the application to construct said ditch, drain or water course.

Sec. 2504. It shall be the duty of the county commissioners, on receipt of the application of the person or persons desiring the construction of such ditch or ditches, with the notice and affidavit as provided in the preceding section, to appoint three disinterested persons, one of whom shall be competent to do surveying or engineering; as viewers and appraisers.

Sec. 2505. When the said viewers shall have been appointed and taken an oath well and truly to locate said ditch or ditches, according to the true intent of this chapter, they shall proceed to locate said ditch or ditches in the best possible manner for the interests of the owners of the lands affected by the location of the same, giving to each of said ditches all the fall the face of the lands will permit, and marking each rod to be dug by stakes upon which must be marked the width and depth of said ditch or ditches.

Sec. 2506. The viewers shall estimate the cost of clearing the way and of digging the said ditch or ditches per rod, making separate estimates for each rod where the said ditch or ditches are to be dug wider or deeper, or the obstructions are greater and harder to overcome in the said digging, and shall apportion to each person benefited, the amount of ditch which he shall dig, in proportion to the benefit which in their judgment he will receive from the construction of the said ditch or ditches. And they shall also estimate the amount of damages, if in their opinion the construction of the said ditch or ditches will damage any owner of lands more than the amount of benefits accruing to him by reason of the construction of the same, which should be paid to the said owner; and the said applicant or applicants shall pay the said estimated damages, taking a receipt therefor, or make satisfactory arrangements with the owner or agent of the said premises, which satisfaction shall be in writing, and the receipt of said written satisfaction shall be filed with the county auditor, prior to any work being done on the said ditch.

Sec. 2507. The viewers shall make a report, specifying the starting point, route, and terminus, of said ditch, drain or water course, its size, estimated cost, and a description of lands through which it is to be dug, and also the amount assessed as damages, if any, which they shall file with the auditor of the county in which the greater portion of the said ditch has been located. And such viewers shall determine from the nature of such survey and view, the time in which such ditch or ditches, drains or water courses shall be completed: *Provided*, Such time shall not exceed two years, nor be less than one year from the date of notice.

Sec. 2508. All parties after receiving notice of the amount of ditch assessed and set to them, shall proceed to clear the way and dig said ditch and have their said proportion of the same completed within the time determined by the viewers, when such view and survey was made, not exceeding two years: *Provided*, That if any person having a portion of said ditch assessed to him shall fail to clear the way and dig such portions of ditch by the time aforesaid, the applicant or applicants may proceed to clear the way and dig the ditch or cause the same to be done according to the plans and specifications of said viewers and the sum assessed to the owners, with legal interest thereon, may be recovered in an action in any court having jurisdiction, and shall be a just claim against and a lien upon the lands through which said ditch or ditches are located, which lien shall be prior to all other liens and incumbrances subsequent to the assessment. And parties owning lands not adjacent to nor affected by said ditch, drain or water course and wishing to drain their lands by cutting a ditch or ditches to intersect the same shall have the privilege of such intersection by first obtaining the consent in writing of a majority of the parties benefited by said ditch.

SEC. 2509. Before the commissioners shall appoint viewers, as provided in section twenty-five hundred and four, the party or parties making the application shall enter into bonds, with one or more sureties, in the sum of two hundred dollars, to be approved by the said commissioners, conditioned, that the party or parties making the application, pay the expenses of the location of the ditch or ditches aforesaid, at the rate per diem of not to exceed five dollars for the surveyor, and not to exceed three dollars for each of the other two viewers, for the time necessarily employed in the survey and location of the said ditch or ditches, and the receipts of the said viewers' fees shall be taken by the party or parties paying the same, and filed with the report in the office of the auditor or auditors of the county or counties, and the amount thereof added to the other estimated costs of the construction of the said ditch or ditches.

SEC. 2510. After the said ditch or ditches have been completed, the same shall be kept in repair by the owners of the land benefited by the same, in proportion to such benefit. And any owner, occupant or agent so benefited, failing to make such repairs, shall be liable to the party or parties making the same, for the amount of the labor required therefor. And if any person shall dam or obstruct the passage of the water in the said ditch or ditches or allow it to be obstructed or damaged by his cattle or other stock without the consent of all the owners of the land through which they or any of them pass, the person so offending shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars and be liable to the party or parties injured in the amount of damages sustained by them by reason of the said obstruction.

SEC. 2511. If the said ditch or ditches shall cross any public road, the person or persons digging the same shall construct or cause to be constructed a good and safe bridge at least ten feet wide over the same.

SEC. 2512. Any person aggrieved by the decision of the viewers may appeal to any justice of the peace in the county where the applicants live, by filing a notice of said appeal with the auditor with whom the said viewers' report was filed, within ten days after the filing of said report, which notice shall be to the applicants and shall contain a copy of the complaint which the appellants shall file with the justice of the peace, and upon which he shall base his cause of action, which must recite that portion of the proceedings of the viewers appealed from.

SEC. 2513. The justice of the peace in whose court the complaint is filed shall cause the said applicants to be summoned the same as defendants in other cases: *Provided*, That service of summons shall be deemed complete if the said applicants, either in person or in writing to the said justice, shall waive the same. And if the appellees shall make default, the justice may set aside the action of the said viewers. But if, upon the hearing of the appeal, the justice shall not change the decision of the viewers an amount greater than five dollars in favor of the appellant, the said appellant shall pay all the costs of the proceedings.

SEC. 2514. No ditch, drain, or water course, shall connect with, or lead into the Columbia river unless by the written consent or agreement of the party or parties, whose lands lie along the immediate bank of said river, and through which any ditch, drain or water course may be desired to pass.

SEC. 2515. Sections 2510 and 2511 shall apply to ditches heretofore dug, for the purposes herein before mentioned, as well as those to be hereafter constructed.

SEC. 2516. The provisions of this chapter shall not apply to the counties of Walla Walla, Yakima, Whitman and Stevens.

## CHAPTER CXCII.

### BOUNDARIES OF TIDE LAND TRACTS.

SECTION
2517. Owners of contiguous tracts may make dike boundary; expense of dike; lien on both tracts for contributive share
2518 Person may adopt as boundary a previously constructed dike by paying share of cost; boundary dike kept in repair by owners share and share alike.

SEC. 2517. Persons owning or desiring to improve contiguous tracts of tide marsh or swampy lands exposed to the overflow of the tide and capable of being made dry, may separate their respective tracts by a dike or ditch, which shall make and designate their common boundary. In all such cases said dike or ditch shall be constructed at the equal cost and expense of the respective parties, and either party failing to pay his contributive share of such expense shall be liable to the party constructing the dike or ditch for such contributive share, or so much thereof as may remain due and unpaid, to be recovered in a civil action in a court of competent jurisdiction and the party constructing such dike shall also be entitled to a lien upon the tract of the party failing to pay his contributive share for the construction of said dike, or so much thereof as shall be due, which lien shall be secured and enforced as liens of materialmen and mechanics are now by law enforced.

SEC. 2518. Any person or persons who may hereafter take a tract of tide land or marsh and shall desire to adopt as his boundary line any dike or ditch heretofore constructed upon and entirely within the boundary line of a neighboring contiguous tract he may join on to said tract and adopt said dike as his boundary by paying to the owner of the tract upon which said dike is constructed one-half of the cost and expense of the construction thereof, and any person so adopting the dike or ditch of another without contributing his half share of the cost or expense thereof shall be liable for his said half share, which may be recovered in a civil action in any court of competent jurisdiction, or the owner of the dike or ditch so used may secure a lien upon the tract of land bounded by said dike for the amount due for the use of said dike in accordance with the provisions of the law securing a lien to materialmen and mechanics: *Provided always*, That when such dike has become the common boundary [of two adjacent tracts, it shall be and remain the common boundary] and the persons owning the said tracts shall be mutually liable for the expense of keeping it in repair, share and share alike.

## CHAPTER CXCIII.

### CONSTRUCTION AND MAINTENANCE OF DIKES AND DITCHES.

SECTION
2519. Appointment of commissioner to improve tide, swamp, marsh or overflow land.
2520. Meeting, how called for that purpose.
2521. Election of president of meeting.
2522. Meeting decides whether improvements shall be made.
2523. Election of commissioners to locate dikes or ditches.
2524. Duties of commissioners; assessments, etc.
2525. Commissioners to elect officers; their duties.
2526. Commissoners elected 1st Monday in June each year.

SECTION
2527. Power of commissioners.
2528. Penalty for obstructing ditches.
2529. Assessment roll, how prepared.
2530. Chapter not to apply to Chehalis county, nor to cities and towns.
2531. Nothing herein contained exempts persons from paying taxes.

SEC. 2519. Whenever there exists in one body, in this territory, three hundred acres or more of tide, swamp, marsh or overflowed lands, owned and possessed by three or more persons, and when a two-thirds majority of said persons may desire to improve said body of land, or any part thereof, by the extension of dikes or ditches in, through, or around said land, said two-thirds majority shall have the right and power to appoint commissioners for that purpose as herein provided.

SEC. 2520. In order to appoint said commissioners for the purposes mentioned in section 2519 said two-thirds majority shall make and sign four written notices of their desire to improve land as aforesaid, describing in said notices the metes and bounds of the land to be diked or drained and the general nature and extent of the proposed improvement. Three of said notices must be posted in three conspicuous places on or in the vicinity of the land to be improved. The said notices shall also fix a time and place on or in vicinity of said land where a meeting of the owners of said land will be held to vote on the question of the proposed improvement and for the selection of the commissioners mentioned in section 2519 which meeting shall be held not less than ten days after the posting of said notices. The person posting said notices shall return the fourth to the meeting called thereunder, with his affidavit endorsed thereon or attached thereto showing the posting of said three notices, where posted and the time of posting.

SEC. 2521. The meeting called under said notices before proceeding to act shall select a president to preside over their deliberation, and a secretary. The secretary shall keep a record of the proceedings of the meeting and he shall also record the notice returned in said record. The said notice returned or the record thereof, shall be received in evidence in any proceeding under this act in all courts of this territory.

SEC. 2522. When the meeting has been organized as provided in section 2521 the president shall put it to vote whether the proposed improvement shall be made or not. The secretary shall keep a record of said vote showing the names of the persons voting for and against the improvement and the number of acres represented by each voter. The owner of the land to be improved shall be entitled to cast one vote for each acre to be improved. If a two-thirds vote is in favor of said improvement then it shall be made. The owner of the land may vote by agent as well as in his own proper person. If the vote is in favor of the improvement the meeting shall at once in the same manner proceed to elect three commissioners to carry on, superintend and make the proposed improvement, but a majority vote only in place of a two-thirds vote shall be necessary to elect said commissioners.

SEC. 2523. The commissioners elected as aforesaid shall have power to cause to be established, located and constructed the said proposed improvement and shall have full supervision over the same. They shall locate said improvement in the best possible manner for the interest of the owners of the land affected by the location of the same. They shall estimate the amount of damages, if in their opinion the construction of said improvement will damage any owner of land more than the amount of benefits accruing to him by reason of the construction of the same, which should be paid to said owner. They shall assess the land benefited by said improvement for the cost and expenses of making the same, including therein, the compensation to be paid to said commissioners and other officers created by this chapter and also the damages heretofore mentioned. The said assessment shall be made upon the land improved in proportion to the benefit which in their judgment the owner of said land will receive from the construction of said improvements. The sum assessed against said land by said commissioners shall be a lien upon the land improved to the extent of the sum assessed. The said lien may be enforced, if the sum so assessed is not paid by the owner of said land, by a suit in the district court having jurisdiction in the county in which such land is situated. The said suit shall be brought in the name of said commissioners against said land and the owner, and the costs of said suit shall likewise be a lien upon said land. Before said assessment is made, the said commissioners shall notify all persons interested that on a day and at a place certain they will proceed to make and levy the assessment herein provided for. At said time and place any person interested may attend and if he feels himself aggrieved by said assessment, he may appeal to the said district court in the same manner as an appeal is taken from an order made by the board of county commissioners. The notice of appeal may be served on the secretary of the commissioners or on the chairman of the board created by this chapter. The notice that the assessment will be made and levied as in this section provided for shall be given by posting three written notices on or in the vicinity of the land to be improved, which notices must be posted at least ten days before said assessment and must be under the hand of the secretary of the commissioners.

Sec. 2524. The commissioners created by this chapter shall at their first meeting appoint one of their number to act as chairman. At said meeting they shall also elect a secretary and treasurer. The secretary shall keep a record of all the proceedings of said commissioners. The chairman has power to call a meeting of the commissioners or of the owners of lands to be improved, in the manner provided in the rules and regulations of said commissioners. The commissioners, in case a vacancy occurs in their number by death, removal, or otherwise, may fill such vacancy. The commissioners shall receive for their services the compensation agreed upon by the ownesrs of the land at any meeting held by said owners. The commissioners shall fix the compensation to be paid to the secretary and treasurer. The treasurer shall receive into his hands all moneys levied and collected under this chapter and shall pay out the same on the order of said commissioners. The commissioners may require the treasurer to execute a bond for the faithful discharge of his duties.

Sec. 2526. On the first Saturday in June, in each year, after the first election of commissioners provided for in this chapter, a meeting of the owners of the land to be improved or being improved shall meet and they may then elect other commissioners in place of those theretofore elected; the election to be held in the same manner as the first election for commissioners.

SEC. 2527. The commissioners created by this chapter shall have power to make all needful rules and regulations necessary to carry out the provisions hereof. They shall have power in case of danger from the breaking of dikes to order out all male persons in the district of land under their charge, over the age of eighteen years and under sixty, to attend at the place of danger for the purpose of repairing such dike, in the same manner as the supervisor of roads orders out persons to work on the road in case of emergency; and if any person so ordered out refuses or neglects to attend, he shall be subject to a penalty of twenty dollars for each day he so refuses or neglects, to be recovered by an action in the name of said commissioners; and money so recovered shall be used in keeping said dike in repair. When ditches become obstructed they shall have like power to order out the persons aforesaid to remove said obstructions, under a like penalty; and money so recovered shall be used in keeping such ditch open.

SEC. 2528. If any person shall dam or obstruct the passage of water, in any ditch; or break or injure any dike constructed under the provisions of this chapter, the person so offending shall, on conviction therefor, be fined in any sum not exceeding one hundred dollars, as well as be liable to the persons injured by such wrongful act in the amount of damages sustained by reason thereof.

SEC. 2529. The said commissioners, when they levy the assessment under this chapter, must cause to be made out by their secretary a roll, which he shall keep in his office, which roll must show the name of the owner of the land, number of acres improved, and the amount assessed against said land for said improvement. This roll shall be received in evidence in all the courts of this territory. The said commissioners may divide the district of land to be improved by them, into three or more districts if they deem it proper so to do, and they may make one or more assessments to pay for making said improvements and paying the other expenses herein provided for. The commissioners also have power to make assessments for the repair of any dike or ditch constructed under this chapter, in the same manner, to the same extent and with like effect as in originally constructing the same.

SEC. 2530. This act shall not apply to Chehalis county nor to incorporated cities or towns.

SEC. 2531. This act shall not be construed so as to exempt the owners of land improved from paying county, road, school, territorial or other general tax thereon.

## CHAPTER CXCIV.

### TOLL FOR GRINDING GRAIN.

SECTION
2532. One eighth allowed as toll.
2533. Duties of owners and occupiers of mills.
2534. Owners of mill not chargeable with unavoidable loss.
2535. Penalty for disobedience to this chapter.
2536. Owner to assist in carrying grists.

SEC. 2532. The owners or occupiers of all mills in this territory, moved by water or other power, shall be entitled to one-eighth part of all wheat, rye or other grain, ground and bolted, or ground and not bolted, and no more: *Provided, however*, Said owner or occupier shall not be permitted to grind his own grain to the exclusion of other grists, when said mill is used and occupied as a grist mill.

Sec. 2533. The owner or occupier of any grist mill shall well and sufficiently grind the grain brought to his mill for that purpose in due time and in the order in which it shall be received, and shall be accountable for the safe keeping of all grain received in such mill, for the purpose of being ground therein, and shall deliver, it when ground, or ground and bolted, as the case may be, with the bag or cask in which it was brought when demanded, but every owner or occupier of a mill may grind his own grain at any time; and nothing in this section contained shall be construed to compel the owners or occupants of mills to grind for sale or merchant work.

Sec. 2534. Nothing contained in the preceding section shall be so construed as to charge the owner or occupant of any mill, for the loss of any grain, bag or cask, which shall happen by robbery, fire or inevitable accident, without the fault of such owner or occupants, his agents or servants.

Sec. 2535. Every miller, or owner or occupant of a grist mill, who shall not well and sufficiently grind any grain as aforesaid, or not in due turn, as the same shall be brought, or who shall exact, or take more toll, than is herein allowed, shall in every such case be liable to a fine of not less than three nor more than twenty dollars, and shall also be liable to the party injured in double the actual damages sustained by him.

Sec. 2536. Every owner or occupier of such grist mill shall assist in carrying grists in and out of said mill, when the owner of such grist is unable to do the same.

## CHAPTER CXCV.

### PROTECTION OF STOCKRAISERS.

Section
2537. Duty of persons separating animals from band; violation of this duty a misdemeanor.

Sec. 2537. It shall be the duty of any and all persons searching or hunting for stray horses, mules or cattle, to drive the band or herd in which they may find their stray horses, mules or cattle, into the nearest corral before separating their said stray animals from the balance of the herd or band; that in order to separate their stray animals from the herd or band, the person or persons owning said stray shall drive them out of and away from the corral in which they may be driven before setting the herd at large. Any person violating this section shall be deemed guilty of a misdemeanor, and on conviction thereof, before a justice of the peace, shall be fined in any sum not exceeding one hundred dollars, and half the costs of prosecution; said fine so recovered to be paid into the school fund of the county in which the offense was committed; and in addition thereto shall be imprisoned until the fine and costs are paid.

## CHAPTER CXCVI.

### ESTRAYS.

Section
2538. Auditor to keep record of.
2539. When may be taken up.
2540. Provides for proving property, costs, etc.
2541. If claim not made within ten days, appraisement to be made by nearest justice of the peace.

Section
2542. County auditor to record appraisement.
2543. Sale of; mode and disposition of proceeds.
2544. Persons taking up, when liable to damages.
2545. Constable to enter suits for violation of this chapter.
2546. Fines collected to go school fund.

Sec. 2538. It shall be the duty of the county auditors of the several counties of the territory to keep a book of suitable dimensions to be called the "record of estrays."

Sec. 2539. Any householder about whose premises any estrays may be in the habit of running at large, may take up the same, and shall within ten days post notices in three public places in the county, one of which shall be in the precinct in which the estray was taken up, giving as correct description as may be, of natural and artificial marks and brands, probable age and size, etc.: *Provided*, That no estray shall be taken up from the 15th of April to the 15th of December, except breachy or vicious animals, which may be taken up in any month: *And, provided further*, That if the animal be branded, and the brand is recorded in the auditor's office of the county where such animal is found, such animal shall not be held to be an estray.

Sec. 2540. If, previous to the expiration of ten days from the time of posting the said notices, the owner shall prove said estray to be his, he shall be entitled to the same, by paying charges, which shall be two dollars for taking up, posting, etc., and a reasonable rate for keeping the same, and if the owner shall further prove that the person so posting an estray, knew to whom such estray belonged, and yet did not notify the owner of his intention to post said estray, the person so taking up, and posting, shall not recover for either posting or keeping.

Sec. 2541. If, at the expiration of ten days, no one shall have made his claims known to the taker up it shall be his duty to make a statement to the nearest justice of the peace of the county in which said estray is taken up, under oath, of the taking up of said estray, posting, etc., according to law, whereupon said justice shall appraise the estray, and immediately notify the county auditor of the same county by letter or otherwise, that an estray has been taken up with marks natural and artificial, etc., and by whom, and said justice shall receive for each appraisal and notification, one dollar, and ten cents for every mile necessarily traveled in such service: *Provided*, That there shall be no charges for appraising on more than three head at the same time and place.

Sec. 2542. It shall be the duty of the county auditor, upon receiving such notice from the justice, to make a record of the same in the "record of estrays."

Sec. 2543. If the person entitled to the possession of an estray shall not appear, and make out his title thereto within thirty days from the time the notice is filed with the county auditor, as provided in section twenty-five hundred and forty-two, such estray shall be sold, at the request of the finder by the sheriff or any constable of the county, at public auction, upon first giving public notice thereof in writing, by posting up the same in three public places in the precinct where said estray was taken up, at least ten days before such sale: *Provided*, That if such animal be appraised at twenty-five dollars or upwards, it shall be advertised for one week in the newspaper doing the county printing, and the finder may bid therefor at such sale, and after deducting all lawful charges of the finder as aforesaid, to be ascertained by the justice who appraised said animal, and the fees of the justice for appraising, and constable, or sheriff, which shall be the same as a sale on execution. The remaining proceeds of such sale shall be deposited in the treasury of the county for the use of common schools: *Provided*, That if the owner of the property sold or his legal representative shall, within six months after the money shall have been deposited in the county treasury, furnish satisfactory evidence to the justice of the peace who has appraised said animal, of the ownership of said property, he or they shall be entitled to receive the amount so deposited in the county treasury: *Provided, however*, That the taker up of estrays shall forfeit all right to a consideration for subsisting the same, if he work, or in any way use such estray or take and keep the same out of the county in which the estray was taken up, more than three days at one time.

Sec. 2544. That if any person shall take up, keep or use any estray, without complying with the provisions of this chapter, he shall be liable to damages in double the value of such estray, and for costs of suit, to be sued for and recovered in any court having competent jurisdiction.

Sec. 2545. It shall be the duty of every constable within any county in this territory, when complaint shall have been made to him by any person of a violation of any of the provisions of this chapter, to immediately enter suit, before the proper court, and the person making the complaint shall be the prosecuting witness: *Provided*, That if, upon trial, the complaint shall be found to be malicious or frivolous, the prosecuting witness shall pay all costs of suit.

Sec. 2546. All moneys collected as fines under the provisions of this chapter, shall be paid into the treasury of the county where the same shall have been collected, for the benefit of common schools in said county.

## CHAPTER CXCVII.

### STUD HORSES, JACKASSES OR STUD MULES.

Section
2547. Certain animals may be gelded.
2548. Certain animals shall be taken up and delivered to owner at his expense.
Section
2548. Owner shall pay all damages done by certain animals.
2549. Repealing former laws.

Sec. 2547. It shall be lawful for any person to take up and geld, at the risk of the owner, within the months of April, May, June, July, August, and September, in any year, any stud horse, jackass, or stud mule, of the age of eighteen months and upwards, that may be found running at large out of the enclosed grounds of the owner or keeper, and if the said animal shall die the owner shall have no recourse against the person or persons who may have taken up and gelded, or caused to be gelded, the said animal, if the same has been done by a person in the habit of gelding, and the owner shall pay one dollar and a half therefor.

Sec. 2548. It shall not be lawful for any person or persons to geld any animal knowing such animal is kept or intended to be kept for covering mares; and any person so offending shall be liable to the owner for all damages, to be recovered in any court having proper jurisdiction thereof; but if any owner or keeper of the covering animal shall willfully or negligently suffer the said animal to run at large out of the enclosed grounds of said owner or keeper, any person may take the said animal and convey him to his owner or keeper, for which he shall receive three dollars per day, recoverable before any justice of the peace of the county. For the second offense six dollars per day, and for the third offense said animal may be taken up and gelded.

SEC. 2549. If any stud horse, stud mule, jackass, ridgling or stag, while running at large out of the enclosed grounds of the owner or keeper, shall damage any other animal by biting or kicking him, or shall do any damage to person or property of any kind whatever, the owner of said stud horse, stud mule, jackass, ridgling or stag, shall be liable for all damages done by him.

## CHAPTER CXCVIII.

### MARKS AND BRANDS.

SECTION
2550. Persons owning horses, cattle, etc., may keep mark or brand.
2551. Persons adopting brand must record the same.
2552. Certified copy of brand *prima facie* evidence of ownership.
2553. Persons killing cattle shall keep record of marks.
2554. Penalty for violating provisions of this chapter.

SEC. 2550. Any person or persons being the owner or owners of horses, mules, cattle, sheep, goats or hogs, may keep a mark, brand and counter brand, different from the brand of his neighbors, and as far as practicable different from any others.

SEC. 2551. Every owner, adopting a brand or mark, shall record with the county auditor his mark, brand and counter brand, by delivering to such auditor his mark cut upon a piece of leather, and his brand and counter brand burnt upon the same; and the auditor shall enter in a book kept by him for that purpose, a description of said mark and brands, together with the owners' names, time of recording, also describing the part or place on the animal where such mark or brand is designed to be used. The auditor, when any mark or brand is presented for record, shall satisfy himself that they are different from any other recorded in his office, and he shall be entitled to charge a fee of fifty cents for every entry made under the provisions of this chapter.

SEC. 2552. On trial of any action involving ownership of any animal, a certified copy of the marks and brands made by the auditor, over the seal of his office, shall be considered as *prima facie* evidence in such trial as to such ownership.

SEC. 2553. Any person or persons slaughtering cattle, and having a definite place of slaughter, shall keep at such place a book, in which shall be entered, on the day of slaughter, the age, as near as may be, and brands of cattle, or other animals slaughtered; also, a full description of every mark or brand on such animal, together with the date of receipt or purchase, and the name of the person from whom the same was received or purchased, and such book shall be kept for the inspection of any person desiring so to do.

SEC. 2554. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined for the first offense in any sum not exceeding fifty dollars, and for a repetition of the offense, not less than fifty dollars, nor more than one hundred dollars, and in default of payment, imprisonment in the county jail at the discretion of the court. One-half of the fines collected under the provisions of this chapter shall go to the informant, and the residue shall be paid to the county treasurer for the school funds of the county where the said offense was committed.

## CHAPTER CXCIX.

### DANGEROUS AND VICIOUS CATTLE.

SECTION

2555. Owners of dangerous cattle liable; when.

2556. Person killing such cattle not liable; when.

SEC. 2555. Any person or persons who own or are owners of dangerous or vicious cattle, which animal or animals are known to endanger the safety of persons traveling through neighborhoods, by their dangerous and vicious disposition, having twelve hours' notice of the dangerous disposition of such animal or animals, and shall neglect or refuse effectually to prevent such cattle from disturbing the peace and safety of the neighborhood where such animals may range, such owner or owners shall be liable to a fine of not less than five dollars, nor more than fifty dollars, which may be recovered before any justice of the peace of the county, with costs of suit, for the use of the school fund.

SEC. 2556. Any person who shall, in defense of himself or others, kill one or more such animals, shall not be liable for any damage for any such act.

## CHAPTER CC.

### BOUNTY FOR KILLING WILD ANIMALS.

SECTION

2557. County commissioners authorized to pay.
2558. Rates of.
2559. Commissioners, when and how to offer.

SECTION

2560. Auditor shall publish notice.
2561. Scalp must be produced.
2562. Commissioners may revoke order.

SEC. 2557. The county commissioners of the several counties of this territory are hereby authorized to offer and pay out of the county funds of the county treasury a bounty for the scalps of cougars, or panthers, black bears, wild cats, and black and gray wolves and musk rats.

SEC. 2558. The bounty provided for in this chapter shall not exceed for each scalp as follows: For each cougar or panther, not more than five dollars; for each black bear, not more than four dollars; for each black or gray wolf, not more than five dollars, and for each wild cat not more than two dollars, and for each musk rat, caught within fifty yards of any dike or dam, not less than ten or more than twenty cents.

SEC. 2559. Whenever, in the opinion of the board of county commissioners, it shall be necessary to offer a bounty as provided in this chapter they shall so order in open court, and cause the order to be spread upon the minutes of the session. Said order shall fix the rate to be offered by the county for scalps, and may contain anything else necessary for carrying out and not inconsistent with the provisions of this chapter.

SEC. 2560. It shall be the duty of the county auditor, whenever the county commissioners shall order that a bounty shall be paid, as provided in the preceding section, to give notice of the order of the board by posting or causing to be posted one notice in each precinct in the county; said notice shall state the amounts fixed by the board per scalp for each animal.

SEC. 2561. Whenever any persons shall have any scalp of any animal named in this act upon which they wish to obtain bounty, they shall present the same to the county auditor, whose duty it shall be to examine the same and ascertain if they have both ears upon them, and such person shall also present to the auditor a bill certified by affidavit that the animal or animals were killed within the county, and that it is just and correct; said bill shall be audited by the county auditor, and presented to the board of county commissioners at their next regular meeting, whose duty it shall be to order the same paid out of the treasury in like moneys as other claims against the county. It shall also be the duty of the auditor to keep a book provided for the purpose, in which he shall enter the names of all persons presenting scalps, the number and kind presented, and after allowance by the board, the amount allowed to each person, which book shall be presented at each regular session for their examination and approval. The said auditor shall destroy said scalps and return the proceedings to each regular session of the board of county commissioners.

SEC. 2562. The county commissioners may, at any regular term of court, revoke their orders offering bounty for scalps.

(SEC. ——. This chapter shall not be so construed as to affect, in any manner, any certificate given or order drawn before the passage of this act.)

## CHAPTER CCI.

### LEGISLATIVE ASSEMBLY.

SECTION
2563. Council to consist of twelve members.
2564. Council districts.

SECTION
2565. House shall consist of twenty-four members; how appointed.

SEC. 2563. The council shall consist of twelve members and be elected as follows:

The county of Walla Walla shall elect one member; the counties of Columbia and Garfield shall elect one member; the county of Whitman shall elect one member; the counties of Walla Walla, Columbia, Garfield and Whitman shall elect one member, jointly; the counties of Stevens, Spokan and Yakima shall elect one member; the counties of Klickitat, Skamania and Clarke shall elect one member; the counties of Cowlitz, Wahkiakum, Pacific and Chehalis shall elect one member; the counties of Lewis and Thurston shall elect one member; the counties of Pierce and Kitsap shall elect one member; the counties of Mason, Jefferson, Clallam and San Juan shall elect one member; the counties of Island, Snohomish and Whatcom shall elect one member; the county of King shall elect one member.

SEC. 2564. The house [of representatives] shall consist of twenty-four members, and shall be elected as follows:

The county of Walla Walla shall elect three members; the county of Columbia shall elect one member; the county of Garfield shall elect one member; the county of Whitman shall elect two members; the counties of Columbia and Whitman shall elect one member; the county of Yakima shall elect one member; the counties of Stevens and Spokan shall elect one member; the county of Klickitat shall elect one member; the counties of Skamania, Klickitat and Clarke shall elect one member; the county of Clarke shall elect one member; the counties of Cowlitz, Wahkiakum, Pacific and Chehalis shall elect two members; the county of Lewis shall elect one member; the county of Thurston shall elect one member; the county of Pierce shall elect one member; the counties of Mason, Jefferson and Clallam shall elect one member; the county of King shall elect two members; the counties of Kitsap and King shall elect one member; the counties of Snohomish and Island shall elect one member; the counties of San Juan and Whatcom shall elect one member.

## CHAPTER CCII.

### TERRITORIAL AUDITOR.

Section
2566. Office at seat of government; bond and oath.
2567. Territorial accountant, and keeper of books of accounts, etc.
2568 May appoint deputy; books open to public inspection.
2569. Shall report at each session.
2570. Duties in detail.
2571. Duties of county auditor in annual settlements.
2572. No warrant to issue without authority of law.
2573. Certain blanks; how to be printed.
2574. May draw warrant for said printing.
2575. Compensation of
2576. Persons required by law to pay money to territorial treasurer; to exhibit accounts, when.

Section
2577. Penalty for violating preceding section.
2578. Creditors must exhibit vouchers within ten years and of set off.
2579. May compel attendance of witnesses, etc.
2580. Shall preserve vouchers.
2581. Authority to draw warrants limited.
2582. Appeals from decision of.
2583. When claims recognized by law, but appropriation not made.
2584. Shall report manner of collections, etc.; when.
2585. Books and accounts to be inspected by legislature.
2586. May administer oaths.
2587. Shall keep a seal of office.

Sec. 2566. The territorial auditor shall reside and keep his office at the seat of government, and before entering upon his duties shall execute and deliver to the governor a bond to the territory in the sum of ten thousand dollars, to be approved by the governor, conditioned for the faithful performance of all duties required, or which may be required of him by law, and take an oath of office before any person authorized to administer oaths, and file a copy thereof, together with his bond, in the office of the governor of the territory.

Sec. 2567. The auditor of public accounts is declared to be the general accountant of the territory, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the territory, and its revenue, debt, and fiscal affairs, not required by law to be placed in some other office or kept by some other person.

Sec. 2568. The territorial auditor shall have authority to appoint a deputy, who, before entering upon the duties of his office, shall take and subscribe an oath faithfully to perform the duties of said office, which oath shall be endorsed on the appointment and filed in the office of the territorial treasurer. Said appointment may be revoked at the pleasure of the territorial auditor. The territorial auditor shall be held responsible on his official bond for all the official acts of his said deputy, and he shall also be individually responsible for the salary or compensation paid or to be paid said deputy, and no part thereof shall be paid by the territory. All the books, papers, letters and transactions pertaining to the office of the territorial auditor shall be open to the inspection of the public generally during office hours.

Sec. 2569. It shall be the duty of the auditor to digest, prepare, and report to the legislative assembly, at the commencement of each biennial session:

1. A full and detailed statement of the condition of the revenues, and the amount of the expenditures for the fiscal year.

2. A full and detailed statement of the public debt.

3. Estimates of revenue, and the expenditures for the next succeeding year.

4. Such plans as he may deem expedient for the support of public credit; for lessening the public expenses; for using the public money to the best advantage; for promoting frugality and economy in public of-

fices; and generally for the better management and more perfect understanding of the official [financial] affairs of the territory.

5. A tabular statement, showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended.

6. A tabular statement, showing separately, the amount of money received into the treasury, from all sources in the preceding fiscal year; the amount received from each county, and the source of revenue in each county.

SEC. 2570. It shall be the duty of the auditor:

1. To audit, adjust, and settle all claims against the territory, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers or persons.

2. To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law.

3. To keep a correct register in tabular form of all warrants issued by him, showing the number, date, amount, to whom, and for what payable with an aditional column in which to enter the date on which each warrant is returned.

4. To express in the body of every warrant which he may draw upon the treasury, the particular fund appropriated by law out of which the same is to be paid.

5. To audit, settle, and adjust the accounts of all collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury.

6. To keep an account between the territory and the territorial treasurer.

7. To keep an account of all debts and credits between the territory and the United States.

8. To direct prosecutions in the name of the territory for all official delinquencies in relation to the assessment, collection and payment of the revenue, against all persons who, by any means become possessed of public money or property, and fail to pay over or deliver the same, and against all debtors of the territory.

9. To give information in writing to either house of the legislative assembly, whenever required, upon any subject relating to the financial affairs of the territory, or touching any duties of his office.

10. To furnish the offices of himself and the territorial treasurer with all books, papers, blanks and forms required by law for the proper discharge of the duties of their offices, and to furnish the proper forms, through the auditors of the counties, to assessors, treasurers and sheriffs and such auditors.

11. To perform all such other duties as may be required by law.

SEC. 2571. Immediately after the completion of the annual settlement of the treasurer and sheriff with the board of county commissioners of each county, the county auditor shall make out and transmit to the territorial auditor a full and complete verified statement of the territorial fund account with his county for the past fiscal year. Said statement shall show:

1. The total amount of tax levy for the current year, as returned on the original assessment roll.

2. The amount of supplemental taxes levied by the treasurer and sheriff.

3. The amount collected from delinquent tax rolls of previous years, since last report.

4. The amount of errors and double assessments allowed on settlement of treasurer and sheriff with the board of county commissioners.

5. The amount allowed for treasurer's commissions on territorial funds during the year.

6. The amount paid to territorial treasurer since last annual settlement; and such other credits as the county may be entitled to by law in abatement of territorial tax.

7. The balance due on delinquent tax account for the current year.

Said statement shall be verified by the certificate and official seal of the county auditor. The territorial auditor, upon receipt of such verified statement, shall proceed from the data furnished, to balance up the county's account with the territory for the current year, and credit the delinquent tax accounts of previous years with amounts, respectively, as shown to have been collected.

Sec. 2572. The territorial auditor shall in no case issue any territorial warrant unless there is a law authorizing the issue of the same, which warrant shall state the act under which it was drawn and the date of the passage of said act, and if any territorial auditor shall issue any territorial warrant not authorized by law, he shall forfeit and pay fourfold the amount of such order to the territory, to be recovered by action against the auditor and his sureties on his official bond.

Sec. 2573. The territorial auditor shall, once in each year, publish notices for proposals to furnish the material and to print the necessary blanks required for territorial purposes, for two weeks in some weekly newspaper published at the seat of government, and it shall be his duty to contract for the said material and printing with the person or persons offering to do the same at lowest rates, and he shall take from such person or persons offering to do the same at the lowest rates, a bond in the sum of five hundred dollars, conditioned to furnish good material and to do the printing in a workmanlike manner.

Sec. 2574. For all printing done for the territory, the auditor is authorized to draw a warrant on the territorial treasury in favor of such person or persons doing such printing, and the auditor shall take his or their receipt therefor, which voucher he shall keep on file in his office, and the territorial treasurer shall pay said warrants as provided by law.

Sec. 2575. The territorial auditor shall receive an annual salary of twelve hundred dollars; and to provide for incidental expenses of his office, consisting of office rent, stationery, lights, fuel, postage stamps, etc., he shall receive the further sum of two hundred dollars per annum, which amounts shall be paid in quarterly installments, by warrant drawn on the territorial treasurer.

Sec. 2576. All persons required by law to pay money into the treasury of the territory, shall, unless otherwise provided, exhibit their accounts and vouchers to the auditor, on or before the first Monday in November in each year, to be audited, adjusted and settled; and the auditor shall proceed, without any unnecessary delay, to audit, adjust and settle the same, and report to the treasurer the balance found due.

SEC. 2577. If any person, so required by law to pay money into the treasury, shall fail to pay the amount so found due into the treasury, and produce the treasurer's receipt to the auditor within ten days after the settlement required, the delinquent shall forfeit to the territory the amount of his commission allowed him by law, and also two and a half per cent. a month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid until actual payment; and the auditor shall charge such delinquent accordingly, and the whole amount of principal and forfeiture may be recovered by action on his official bond.

SEC. 2578. All persons having claims against the territory shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed within two years after such claim shall accrue, and not afterwards. And in all actions brought in behalf of the territory, no debt or claim shall be allowed against the territory as a set-off but such as has been exhibited to the auditor, and by him allowed or disallowed, except only in cases where it shall be proved to the satisfaction of the court, that the defendant at the time of trial is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor by absence from the territory, sickness or unavoidable accident.

SEC. 2579. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the party, witnesses and others on oath or affirmation, touching any matter material to be known in the settlement of such account, and for that purpose may issue summons, and compel witnesses to attend before him and give evidence in the same manner, and by the same means allowed to courts of record.

SEC. 2580. All accounts, vouchers and documents, settled or to be settled by the auditor, shall be preserved in his office, and copies thereof, authenticated by the official seal, shall be given to any person interested therein, who shall require the same.

SEC. 2581. In all cases of grants, salaries, pay and expenses, ascertained and allowed by law found due to individuals from the territory, when audited, the auditor shall draw a warrant upon the treasury for the amount, in the form used in the treasury department; but in case of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrant shall be drawn by the auditor, or paid by the treasurer, unless the previous appropriation shall have been made by law for that purpose, nor shall the whole amount drawn by and paid under any head, ever exceed the amount thus appropriated.

SEC. 2582. If any person interested shall be dissatisfied with the decision of the auditor on any claim, account or credit, it shall be the duty of the auditor, at the request of such person, to refer the same, with the reasons of his decision, to the legislative assembly.

SEC. 2583. In all cases where the laws recognize a claim for money against the territory, and no appropriation shall be made by law to pay the same, the auditor shall audit and settle the same, and give the claimant a certificate of the amount thereof, under the official seal, if demanded, and shall report the same to the legislative assembly with as little delay as possible.

SEC. 2584. The auditor shall report to the legislative assembly within ten days after the commencement of each regular session, a list of all collectors of the revenue and other holders of the public money, whose accounts remain unsettled for six months after they ought to have been settled according to law, and the reasons thereof.

Sec. 2585. All the books, papers, and transactions pertaining to the office of auditor shall be open to the inspection of a committee of the legislative assembly, or either branch thereof, who shall examine and settle all the auditor's accounts.

Sec. 2586. The auditor shall have power to administer all oaths required by law in matters pertaining to the duties of his office.

Sec. 2587. The auditor shall keep a seal of office, for the authentication of all papers, writings and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence as the original.

## CHAPTER CCIII.

### TERRITORIAL LIBRARY—LIBRARIAN.

Section
2588. Governor to appoint librarian.
2589. Oath and bond of librarian.
2590. May appoint a deputy.
2591. Duties prescribed.
2592. Library open during sessions of assembly, and supreme court.
2593. Officers, attorneys, etc., free use of books at library room
2594. When books shall be returned; penalty.
2595. During district court, privileges to attorneys, etc.
2596. Privileges of Territorial officers.
2597. Privileges of other persons.
2598. Penalty for failing to return books, etc.
2599. Library to be kept open, when.
2600. Damages for use of books to be deducted.
2601. Penalties for failure to return books.
Section
2602. Mutilation of books a misdemeanor.
2603. Books now out to be returned within two months.
2604. Certain officers to enforce return of books to library; their return.
2605. Officers failing to prosecute, punishment prescribed.
2606. Actions under this law deemed criminal.
2607. Moneys collected under this law a library fund.
2608. $1000 worth of books must not be out at one time.
2609. Salary of librarian.
2610. Supreme judges may exchange certain books.
2611. Librarian to distribute territorial reports.
2612. Librarian authorized to pay certain expenses.
2613. Woman eligible to office of librarian.

Sec. 2588. The territorial library of this territory shall be kept by a librarian, who shall be appointed by the governor, subject to confirmation by the council of the legislative assembly, whose term of office shall be for two years, next following his appointment, and in case of vacancy the governor shall appoint a librarian to fill the unexpired term.

Sec. 2589. The territorial librarian, before he enters upon the duties of his office, shall qualify by an oath to faithfully perform his duties, and give a bond in the sum of two thousand dollars payable to the territory, that he will perform his duties as librarian.

Sec. 2590. The territorial librarian may at any time appoint a deputy who shall, before he enters upon his official duties, qualify in the same manner as the territorial librarian.

Sec. 2591. It shall be the duty of the librarian to keep a correct account of all books in the library, and keep said books in an orderly manner on the shelves of said library, except he allows them to be taken from the shelves as hereinafter provided, and to use that reasonable diligence, which a careful man would do in his own private office, to collect the books outstanding into the library, to keep all the books of said library marked so that it may be known to whom they belong, to report at end of session of the legislature to one of the houses thereof, all increase or decrease in such library, and the sources and reasons of such decrease and increase, and when his office expires deliver all accounts and papers concerning said library and all of said library to his successor in office.

Sec. 2592. The librarian shall, during the session of the legislature and supreme court, keep said library open for the use of the legislature and other officers and the attorneys and judges of said court, and all the books of the library shall at that time be collected into the library for the use of said persons and other officers of the territory.

Sec. 2593. Said persons above named shall be allowed at all times to use the books in the library room, but shall in no case be permitted to take any book therefrom, unless he first deposits with the acting librarian a receipt therefor, signed by the person taking the book, in which case said party may be allowed to take such book from the library room.

Sec. 2594. But no books so taken shall be allowed to be taken outside of the city of Olympia, and all persons violating this section shall forfeit to the territory an amount equal to five times the value of the book so taken, to be collected as hereinafter prescribed: *Provided, however*, That on an order of the court or judge, any law book may be taken out of said library beyond the city of Olympia.

Sec. 2595. Every person who shall take a book from the library, as provided in the last section, shall within three days after the adjournment of the legislature or court aforesaid, return such book to the territorial library, and in case of failure, he shall forfeit to the territory an amount equal to five times the value of the book, and in case said book is one of a set, then five times the value of the set to which the said book belongs.

Sec. 2596. During the session of a district court, judges, attorneys and other officers of the court, can have the same privileges, under the same restrictions and penalties and other provisions as is provided above.

Sec. 2597. All territorial officers shall at all times have free access to the library and use of the books to take away as above stated, in all respects and under the same regulations, penalties and provisions as aforesaid, except the time of their return of said books, instead of being three days after the end of the session of the legislature or court, shall be one month after they receive said books.

Sec. 2598. Any and all other persons than those above named may have free access to said library at any time the same may be open, to use the same in the library room while the same is open and not otherwise, except as provided in the next section. Any person can take a book from said library, except when the supreme court or legislative assembly is in session, by first depositing in money with the territorial librarian the value of said book, if it be one not belonging to a set, and if it be one belonging to a set, then by depositing the value of the whole set, and also by depositing with the librarian a receipt for said book signed by the person taking the book.

Sec. 2599. Any person obtaining a book under the provisions of the last section, shall return the same to the librarian in all cases three days before the session of the legislative assembly or supreme court, and in other cases within one month from the time the same is taken.

Sec. 2600. It shall be the duty of the librarian to keep open, for the use of the public as aforesaid, the library on every Saturday from the hour of nine o'clock in the forenoon till four o'clock in the afternoon.

☞ Sec. 2601. The person returning the book shall be entitled to his receipt which he gave for the same and to his money which he deposits, less the amount of damage done to the book returned.

Sec. 2602. If any person fails to return a book within the time specified in this act, such person shall, in case said book be a single independent book, pay a forfeiture to the territory five times the value of said book, and in case such book be one of a set, then five times the value of the set to which it belongs, and the book shall remain the property of the territory.

Sec. 2603. Any person who shall purposely destroy, mutilate, alter, deface, conceal or cover up the territorial marks on any book belonging to the territorial library, shall be deemed to intend to embezzle the same and guilty of a misdemeanor, and shall be fined in any sum not less than twenty dollars nor more than one hundred dollars, and imprisonment in the county jail for any time not exceeding six months.

Sec. 2604. Any person who has any book belonging to the territorial library shall within two months return said book to the territorial librarian, and if any person now having such book shall fail to return such book in said time, such person shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than five times the value of the book so retained, nor more than five hundred dollars, and also shall deliver up such book or books.

Sec. 2605. It shall be the duty of the territorial librarian and each of the district attorneys and county treasurers of this territory, to use the best of their endeavors to find any and all books which belong to the territorial library, and to immediately seize upon said books and return the same to the territorial library; and it shall be the duty of all said officers to prosecute all persons guilty of a violation of this act, and such officers besides the usual fees allowed for prosecuting, shall be entitled to half the fines recovered in said cases.

Sec. 2606. Any of said officers who fail to prosecute all of those cases above mentioned which shall come to his knowledge, shall be deemed guilty of the offense which it was their duty to have prosecuted, and shall be prosecuted by any person in the same manner as other cases under this act.

Sec. 2607. All actions prosecuted under this act shall be deemed criminal actions, and shall be prosecuted as other crimes and misdemeanors are prosecuted in the name of the territory, and all courts of justices of the peace shall have concurrent jurisdiction with the district courts in all cases wherein the penalty is one hundred dollars or less, and in all other cases the district courts shall have the jurisdiction thereof.

Sec. 2608. All moneys recovered under the provisions of this chapter shall be paid immediately to the territorial treasurer, and shall be as a separate fund for the benefit of the territorial library.

Sec. 2609. The territorial librarian shall not at any time permit books to a greater value than one thousand dollars to be absent from the territorial library at one time, and said librarian shall be responsible on his territorial bond for any violation of his duty, and the same shall be prosecuted in case of a breach of duty by the prosecuting attorney of the second judicial district, and the money received deposited with the territorial treasurer for the benefit of the library. If the librarian shall permit more books than a thousand dollars' worth to be taken from the library at one time, he shall forfeit twice the amount of the excess. The librarian shall be allowed a salary of four hundred dollars per annum, to be paid quarterly, and the auditor shall draw a warrant on the territorial treasurer for the said amount.

Sec. 2610. The judges of the supreme court, or a majority of them, may exchange or sell such law books and public documents as to the said judges may seem conducive to the best interest of the said library; and the said judges shall buy with the proceeds of such sale or sales, or shall receive in exchange for books so exchanged, such books as they shall direct.

Sec. 2611. It shall be the duty of the official supreme court reporter to deposit with the librarian such supreme court reports of this territory as the territory is by law entitled to, receiving his receipt for the same. The librarian shall forward to all persons in this territory, entitled by law to receive such reports, an annual copy of the same, as well as to the library of congress and to the libraries of the several states and territories, practicing a like comity with this territory. His account for expenses of transporting the same shall be paid out of the territorial treasury, by warrant drawn by the territorial auditor, who shall receive proper vouchers for the same.

Sec. 2612. The librarian is hereby authorized to pay reasonable freight and other charges upon books or other documents sent to the library, and to buy such fuel, stationery, wrapping paper, twine, stamps, etc., as may be found necessary for the use of said library, not exceeding the sum of one hundred dollars for any two years—taking proper vouchers therefor, and upon presentation of said vouchers, the territorial auditor shall, at the end of each quarter, issue a warrant upon the treasurer of the territory in favor of the librarian for the amount so found due.

Sec. 2613. Any person, male or female, over the age of twenty-one years, shall be eligible to the office of territorial librarian, and the word he whenever contained in this act shall be construed to mean he or she.

## CHAPTER CCIV.

### NOTARIES PUBLIC.

SECTION
2614. Governor may appoint as many as he deems expedient.
2615. He shall be appointed for county where he lives.
2616. Act to be performed by persons appointed.
2617. Secretary shall inform governor of performance of acts.
2618. Powers of notary public.

SECTION
2619. How oath to be certified.
2620. Must keep record of all protests and notices.
2621. On death or resignation, papers go to successor.
2622. Fees of notary.
2623. Secretary of territory shall deliver certificate to clerk of court.
2624 All acts legalized, regardless of seal.
2625. Money received under this act, how disposed of.

Sec. 2614. The governor shall hereafter appoint and commission as many notaries public as he shall deem expedient, and he may, at any time, revoke any appointment.

Sec. 2615. Every notary public shall be appointed for the county in which he resides, and shall hold his office for four years, unless his appointment is sooner revoked.

Sec. 2616. Before a commission shall issue to the person appointed, he shall:

1. Pay into the territorial treasury the sum of five dollars, taking the territorial treasurer's receipt therefor.

2. Procure a seal, on which shall be engraved the words "notary public," "notarial seal," or words of equivalent import, and "Washington territory," with his surname in full, and at least the initials of his christian name.

3. To take and subscribe the oath of office required of all territorial or county officers.

4. Append to the said oath a clear impression of his official seal, which seal shall be approved by the governor.

5. File the said oath of office, impression and approval of seal, and territorial treasurer's receipt, in the office of the secretary of the territory.

Sec. 2617. When the secretary of the territory is satisfied that the requirements of the foregoing section have been fully complied with, he shall so inform the governor, who shall issue or cause to be issued a commission to the person appointed, who shall thereupon be authorized to enter upon the duties of his office.

Sec. 2618. Every duly qualified notary public is authorized in any county in this territory:

1. To transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and laws of merchants.

2. To take acknowledgments of all deeds and other instruments of writing, and certify the same in the manner required by law.

3. To take depositions and affidavits, and administer all oaths required by law to be administered, and every attorney at law who is a notary public, may administer any oath to his client, and no pleading or affidavit shall on that account be held by any court to be improperly verified.

Sec. 2619. It shall be sufficient for any notary public to certify an oath to be used in this territory, in any of the courts, or in any matter whatsoever, to say simply in addition to his name, "notary public," and all the courts of this territory shall consider an oath or affidavit otherwise properly certified by an acting notary public, without the impression of his seal, or other or further addition.

Sec. 2620. Every notary public is required to keep a true record of all notices of protest given or sent by him, with the time and manner in which the same were given or sent, and the name of all the parties to whom the same were given or sent, with the copy of the instrument in relation to which the notice is served and of the notice itself.

Sec. 2621. On the death, resignation or removal from office, and at the expiration of the term of office, of any notary public, his records and all his official papers, shall within three months therefrom be deposited in the office of the auditor of the county for which such notary shall have been appointed, and if any notary public, on his resignation or removal from office, shall for the space of three months neglect to so deposit his records, he shall forfeit a sum not exceeding one thousand dollars, to be recovered in a civil action by any person injured by such neglect, and it shall also be the duty of the executor or administrator of the estate of any notary public, deceased, to deposit the records and official papers of such notary with the said auditor, and within three months after his appointment under like penalty.

Sec. 2622. Every notary public is entitled to demand and receive the fees herein enumerated:

For every protest of a bill of exchange or promissory note, one dollar.

Attesting any instrument of writing, under seal, one dollar.

Noting a bill of exchange or promissory note for non-acceptance or non-payment, one dollar.

Taking acknowledgment of any legal instrument, one dollar.

Registering protest of bill of exchange or promissory note, seventy-five cents.

Certifying an affidavit, and all other certificates under seal, one dollar.

Each oath or affirmation without seal, twenty-five cents.

Being present at demand, tender or deposit, and noting the same, besides mileage at ten cents per mile, fifty cents.

For any instrument of writing drawn by a notary public, for each hundred words, twenty-five cents.

Sec. 2623. After the delivery of a commission to a notary public, appointed and qualified as heretofore provided, the secretary of the territory shall make a certificate of such appointment, with the date of said commission, and file the same in the office of the clerk of the district court of the district or sub-district where such notary resides, who shall file and preserve the same, and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force.

Sec. 2624. All official acts heretofore done and performed by notaries public in this territory, and attested by their official seals, shall be taken as valid and of full force and effect, if such seals were approved by the governor of the territory at the time of commissioning said notaries public.

Sec. 2625. The territorial treasurer shall keep all moneys received by him under the provisions of this chapter as a special fund and pay the same out only upon warrants drawn by the territorial auditor against the said fund, and whatever of the said fund shall remain in his hands, unappropriated as hereinafter provided, at the end of each fiscal year, shall be transferred to the general fund.

## CHAPTER CCV.

### COMMISSIONERS OF DEEDS.

SECTION
2626. Governor may appoint in all the states and territories; powers of said commissioners; term of office.
2627. Qualification of.

Sec. 2626. The governor may appoint in each of the United States and the territories thereof, one or more commissioners, under the seal of this territory, to continue in office for the term of four years, who shall have power to administer oaths, and to take depositions and affidavits to be used in this territory; and also to take the acknowledgment of any deed or other instrument, to be used or recorded in the territory.

Sec. 2627. Before any commissioner, appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall take and subscribe an oath before any justice of the peace, or other officer authorized to administer oaths in the state or territory for which such commissioner is appointed, that he will faithfully discharge all the duties of his office; a certificate of which shall be filed in the office of the secretary of the territory.

# CHAPTER CCVI.

## INSPECTOR OF COAL MINES, VENTILATION OF COAL MINES.

SECTION
2628. Office of inspector created, qualification and oath of office.
2629. Board of inspectors.
2630. Duties and compensation of inspector.
2631. Inspector shall not be interested in mining.
2631. Shall report annually to governor.
2632. Shall keep office, records, etc.
2633. Maps and plans of mines to be furnished by owners.
2634. Method of ventilation prescribed.
2635. Amount of ventilation prescribed.
2636. Penalty of owners violating this chapter.
2637. Inspector may be removed for malfeasance.
2638. Mines worked by less than ten men excepted from provisions of this chapter.

SEC. 2628. The inspector of coal mines in this territory shall be appointed by the governor, and shall hold his office for four years; and no person shall be appointed unless he is possessed of a competent knowledge and has a practical knowledge of mining engineering and different systems of working and ventilating coal mines and of the nature and properties of the noxious and poisonous gases of mines, particularly fire damp.

SEC. 2529. Before entering upon the discharge of the duties of the office, the inspector shall give bond to the territory of Washington, in the sum of five thousand dollars with sureties to be approved by the governor, conditioned for the faithful performance of his duties; the bond, with his oath of office and approval of the governor indorsed thereon, shall be forthwith deposited with the secretary of the territory.

SEC. 2630. The inspector shall visit all coal mines in this territory, that are being worked or may be worked hereafter, once in three months, and the said inspector, while on any such visitation, shall be paid five dollars per day and ten cents per mile to and returning from such mine or mines to his office; and the inspector shall keep a correct account of every day employed in the inspection of such mine or mines, and the owner or owners of any such coal mine or mines shall pay the expenses of such inspection, when so inspected, and the inspector may enter, inspect and examine any mine in the territory, and the works and machinery belonging thereto, at all reasonable times, by night or by day, but so as not to unnecessarily obstruct or impede the working of any mine or mines, and to make inquiry into the state and condition of the mine or mines, as to the ventilation and general security; and the owner or owners, or agent of such mine or mines, are hereby required to furnish the means necessary for such entry and inspection, of which inspection the inspector shall make a record, noting the time and all the material circumstances; and the person having charge of any mine or mines, whenever loss of life occurs by accident connected with the working of any such mine or mines, or by explosion, shall give notice forthwith, by mail or otherwise, to the inspector of such mine or mines, and to the coroner of the county in which such mine or mines are located, who shall hold an inquest upon the body of the person or persons whose death has been caused, and enquire carefully into the cause thereof, and shall return a copy of the finding, and all the testimony, to the inspector.

SEC. 2631. The inspector, while in office, shall not act as an agent or as a manager or mining engineer, or be interested in operating any mine; and he shall annually make report to the governor of all the proceedings or the condition and operation of the mines of the territory, enumerating all the accidents in and about the same, and giving all such other information as he thinks useful and proper, and making such suggestions as he deems best to further legislation on the subject of mining.

SEC. 2632. The inspector shall keep his office in the county where so appointed, in which shall be carefully kept the maps and plans of all mines in the territory, and all records and correspondence, papers and apparatus and property pertaining to his duties, belonging to the territory, and which shall be turned over to his successor in office.

SEC. 2633. The owner or owners or agent of any coal mine shall make or cause to be made an accurate map or plan of the working of such mine, on a scale of not less than one hundred feet to the inch, showing the area mined or excavated. and the location and connection with such excavation of the mine, of the lines of all adjoining lands, and the name of such owner or owners, so far as known, marked on each tract, a true copy of which map the owner or agent shall deposit with the inspector, and another copy of which shall be kept at the office of such mine, and the owner or owners or agent shall, every four months thereafter, file with the inspector a statement and plan of the progress of the workings of such mine up to that date, which statement and plan shall be so prepared as to enable the inspector to mark the same on the original map or plan herein required to be made; and in case of refusal on the part of the owner or owners or agent of said mines to make and file the map or plan, or the addition thereto, the inspector is authorized to cause an accurate map or plan of the whole of said mine to be made at the expense of the owner thereof, the cost of which shall be recoverable against the owner in the name of the person or persons making the map or plan, which shall be made in duplicate, one copy being delivered to the inspector and the other left at the office of the mine or mines; and he shall, on being paid the proper cost thereof, on demand of any person interested in the working of such mine or mines, or owner of adjoining lands, furnish an accurate copy of any map or plan of the working of such mine or mines.

SEC. 2634. It shall be unlawful for the owner or agent of any coal mine or mines, worked by shaft, tunnel or drift, wherein over fifteen thousand square yards have been excavated, to employ or permit any person to work therein, unless there are to every seam of coal worked in such mine at least two separate outlets, by which shafts or outlets, distinct means of ingress and egress are always available to the persons employed in the mine; but it is not necessary for the two outlets to belong to the one mine; the second outlet need not be made until fifteen thousand yards have been excavated therein; and in case such outlets are not provided as herein stipulated, it shall not be lawful for the agent or owner or owners of any such coal mine to permit more than twenty persons to work therein at any one time. In case a coal mine has but one shaft, slope, drift or tunnel for the ingress or egress of the men working therein, and the owner thereof does not own suitable surface ground for another opening, he may select and appropriate any adjoining land for that purpose and for approach thereto, and shall be governed in his proceedings in appropriating such land by the provisions of law in force providing for the appropriation of private property by corporation, but no land shall be appropriated under the provisions of this chapter until the court is satisfied that suitable premises cannot be obtained by contract upon reasonable terms.

Sec. 2635. The owner or owners or agent of every coal mine in this territory, whether shaft, slope, drift or tunnel, shall provide and maintain for every such mine an amount of ventilation of not less than one hundred cubic feet per minute per person employed in such coal mine, and as much more as the inspector may direct, which shall be circulated to the face of each and every working place throughout the mine; and all mines generating fire damp shall be kept free from standing gas, and in all mines where fire damp is generated, every working place shall be carefully examined every morning, with a safety lamp, by a competent person, before any of the workmen are allowed to enter.

Sec. 2636. In case any coal mine does not, in its appliances for the safety of the persons working therein, conform to the provisions of this chapter or the owner or owners or agent disregard the requirements of this chapter any court of competent jurisdiction may on application of the inspector, by civil action, in the name of the territory, enjoin or restrain the owner or owners of such mine or agent of such mine, from working or operating such mine with more than twenty persons at once, until it is made to conform to the provisions of this chapter and such remedy shall be cumulative and shall not take the place of or affect any other proceeding against such owner or owner or agent authorized by law for the matter complained of in such actions.

Sec. 2637. When written charges of gross neglect of duty or malfeasance in office against any inspector, and upon petition of twenty miners to the governer, he may be removed at any time and upon removal, the governor shall proceed to fill such vacancy.

Sec. 2638. The provisions of this chapter shall not apply to or affect any coal mine in which not more than ten men are employed at the same time. but upon the application of the proprietor of, or miners in, any such mine, the inspector shall make or cause to be made an inspection of such mine, and direct and enforce any regulations in accordance with the provisions of this chapter that he deems necessary for the safety of the health and lives of the miners.

## CHAPTER CCVII.

### THE INSPECTION AND MEASUREMENT OF LOGS, AND THE FORMATION OF LUMBER DISTRICTS.

Section
2639. Lumber districts established by the governor
2640. Inspector appointed for each district.
2641. Governor may remove inspector.
2642. Bond and oath of office of inspector.
2643. Inspector to keep office at designated place
2644. Inspector may divide district into sub-district; inspector may appoint deputies.
2645. Must scale logs at request of owner of logs and deliver certificate thereof.
2646 How logs are to be scaled.

Section
2647. Fees of inspector.
2648. Logs to be scaled where rafted; one-half of one per cent of fees received by inspector to be paid to county.
2649. All sales void, until logs are scaled.
2650. Inspector to file with auditor statement of logs scaled.
2651. Penalty for removing logs before scaling.
2652. Disposition of fines.

Sec. 2639. For the purpose of inspecting and regulating the measurement of logs, lumber districts are established, the number and location of which shall be designated by the governor, said lumber districts not to exceed twelve in number.

Sec. 2640. The governor shall appoint an inspector for each of said lumber districts, who shall be styled lumber inspector of district no. —, (designating the proper district). He shall, at the time of his appointment, be a citizen of this territory, and reside within the lumber district for which he is appointed. His term of office shall be for two years, and shall commence on the first Monday of January next following his appointment, but the incumbent shall hold until his successor is appointed and qualified. All vacancies in such office shall be filled by like appointment, and if such vacancy occurs before the expiration of the term, it shall be filled for the residue of the term only.

SEC. 2641. The governor shall, at his discretion, have the power, upon receiving a petition signed by six master loggers of the same lumber district, to the effect that the lumber inspector of that district is in any way derelict in his duty, to remove the same, and to appoint a successor to fill the unexpired term.

SEC. 2642. Each lumber inspector shall, upon entering upon the duties of his office, take and subscribe an oath that he will faithfully discharge the duties of his office to the best of his knowledge and ability, and execute to the county in which his office shall be kept, a bond with three or more ample sureties, to be approved by the treasurer of said county and by the district judge in whose judicial district the said county is located, in the sum of three thousand dollars, conditioned that he will faithfully perform his duties as lumber inspector of district no. —, (giving the number), and deliver to his successor in office all bills, papers, journals, books and other effects appertaining to his office. Such oath of office and bond shall be filed with the county treasurer, and any person feeling himself aggrieved may commence an action in his own name on said bond, in like manner as actions are brought on other official bonds.

SEC. 2643. The inspectors of lumber districts shall keep their respective offices at the places designated by the governor when making their respective appointments.

SEC. 2644. Each such inspector may divide his district into such sub-districts as he may deem best, and for each such sub-district, as well as for any specific purpose, may appoint one or more deputies for whose conduct and fidelity in the discharge of his duty, as such, he shall be responsible upon his official bond. Each of said lumber inspectors shall have power and authority to administer oaths to his several deputies, or for any purpose relating to the duties of their office.

SEC. 2645. Each lumber inspector shall in person or by deputy, at the request of any owner of logs, scale or measure the same. After such scalement or measurement, he shall make a bill stating therein the number of logs, the number of feet, board measure, contained in such logs, and at whose request the same were scaled or measured, and to whom scaled or measured, a copy of which he shall enter upon the books of his office, to be provided by him and kept for that purpose, with the marks, if any, as they occur upon the logs. A correct bill of the same shall be given to such owner, with a certificate thereto attached that it is a true and correct bill, which bill so certified shall be presumptive evidence of the facts therein contained, and of the correctness of such scalement or measurement, in all the courts of this territory, except in favor of the inspector or deputy inspector who made the same.

SEC. 2646. Each lumber inspector and his deputies shall, in scaling or measuring logs, make such allowance for hollow or crooked logs as would make them equal to good, sound, straight and merchantable logs, and all logs that are straight and sound are to be measured at their full size inside the bark at the small end, allowing for the rise. Each lumber-inspector shall require of each of his deputies, at the end of each month, a correct account of all the logs measured or scaled by him during the month next preceding, and he shall immediately enter such account upon the books of his office. In measuring or scaling all logs the "new Scribner" scale shall be the scale used by such inspector, and lumber shall be scaled every forty feet.

Sec. 2647. Each lumber inspector shall be entitled to receive the following fees for services, viz: Five cents per thousand feet for measuring or scaling and making out survey bills for all logs he is called upon to measure or scale; and in all cases such fees shall be paid by the party employing him to scale or measure said logs.

Sec. 2648. All logs shall be scaled at the place where they are boomed or rafted, ready for towing; and one-half of one per cent. of all fees received by the scaler or his deputy for scaling logs, shall be paid into the treasury of the county where said logs were cut, for the benefit of such county, within one month after the said logs were scaled.

Sec. 2649. All sales and all contracts for sales of logs, cut in any of the lumber districts so designated by the governor, shall be void unless the same shall have been scaled or measured as herein provided by the said lumber inspector or their deputies, and a scale-bill thereof made and certified to as herein provided, and shall have been delivered to the owner of said logs. Such scale-bill shall constitute the basis by which all logs are bought and sold within any of said districts, in so far as relates to the quantity thereof.

Sec. 2650. Each lumber inspector shall file with the auditor of the county in which his office is located, a correct account of all logs measured or scaled by him during the month next preceding. who shall immediately enter such account upon a book kept in his office for such purpose. Each lumber inspector shall also report to the legislature, within ten days after the meeting thereof, the amount of logs scaled or measured by him in his district for the two years previous to the date of his report: *Provided*, That no lumber district under this act shall be established in the counties of Walla Walla, Columbia, Whitman, Spokane, Stevens, Clarke, Klickitat, Skamania and Yakima.

Sec. 2651. Any person, firm or corporation who shall remove any saw logs from the county where the same were boomed or rafted ready for towing until the same shall have been scaled, as provided by this chapter shall be fined in any sum not exceeding two thousand dollars, nor less than five hundred dollars, to be recovered by an action in the name of the territory, in the district court having jurisdiction in the county where said logs were cut, or rafted, or boomed.

Sec. 2652. One-fourth part of all fines, recovered under the provisions of this chapter, shall be paid to the party instituting the proceedings, one-fourth to the county in which the logs were cut, and one-half to the territory.

## CHAPTER CCVIII.

### COUNTIES.

SECTION
2653. Bodies corporate for certain purposes.
2654. When corporate name of county must be used,
2655. Powers can be exercised only by county commissioners.
2656. Conveyances for use of county, to have same effect as made to.
2657. New counties liable for propoition of debts, and receive proportion of property.
2658. Auditors to meet and apportion debts.
2659. In cases of disagreement, an umpire to be chosen
2660. Liquidation of the debt, how made.
2661. Boundaries and corners, how established.
2662 Taxes, how collected upon division of county.

SEC. 2653. The several counties in this territory shall have capacity as bodies corporate, to sue and be sued in the manner prescribed by law; to purchase and hold lands within its own limits; to make such contracts and to purchase and hold such personal property as may be necessary to its corporate or administrative powers, and to do all other necessary acts in relation to all the property of the county.

SEC. 2654. The name of a county, designated in the law creating it, is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property and duties.

SEC. 2655. Its powers can only be exercised by the county commissioners, or by agents or officers acting under their authority or authority of law.

SEC. 2656. Every conveyance of lands, or transfer of other property, made in any manner for the use of such county, shall have the same force and effect as if made to said county in its proper and corporate name.

SEC. 2657. That whenever a new county shall be, or shall have been, organized over territory which shall have been included within the limits of any other county or counties, the new county shall be liable for a reasonable proportion of the debts of the county from which it was taken, and entitled to its proportion of the property of the county.

SEC. 2658. The auditor of the old county shall give the auditor of the new county reasonable notice to meet him on a certain day at the county seat of the old county, or at some other convenient place, to settle upon and fix the amount which the new county shall pay. In doing so, they shall not charge either county with any share of debts arising from the erection of public buildings, or out of the construction of roads or bridges which shall be and remain, after the division, within the limits of the other county, and of the other debts they shall apportion to each county such a share of the indebtedness as may be just and equitable, taking into consideration the population of such portion of territory so forming a part of the said counties while so united, and also the relative advantages, derived from the old county organization.

SEC. 2659. In case the two auditors cannot agree, they shall call a third person, not a citizen of either county, or in any other manner interested, whose decision shall be binding. In case they cannot agree upon such third person, they shall each name one and decide by lot which it shall be.

SEC. 2660. The auditor of the county indebted upon such decision, shall give to the auditor of the other county, his order upon the treasurer for the amount to be paid out of the proper fund as in other cases, and also make out a transfer of such property as shall be assigned to either county.

Sec. 2661. All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by the surveyors of all the counties affected thereby, and approved by the board of county commissioners of such counties, or by a survey made by the surveyor-general, on application by the board of county commissioners of any county affected thereby. The cost of making such surveys must be apportioned equally among the counties interested, and the board of county commissioners must audit the same, and the amounts must be paid out of the general county fund.

Sec. 2662. When a county is divided, or the boundary is altered, all taxes levied before the decision was made, or boundaries changed must be collected by the officers of, and belong to the county in which the territory was situated before the division or change.

## CHAPTER CCIX.

### COUNTY COMMISSIONERS.

Section
2663. Commissioners to be elected; quorum, term of office.
2664. Two shall not serve from one precinct.
2665 Persons elected to vacancies to fill unexpired term.
2666. Each commissioner to take and file an oath.
2667 Of the sessions of the commissioners.
2668 County auditor to be clerk of the board.
2669 Extra session, notice of.
2670. Compensation of county commissioners.
2671. When two disagree, question postponed.
2672. Seal of
2673. Duties of the county commissioners.
2674. How real estate of county may be sold.
2675. Record of the proceedings of the commissioners to be kept
2676 To elect a chairman; his duties and powers.
2677. Certain offices to be provided by.
2678 At the May session, to examine the accounts of treasurer and auditor.
2679. To divide county into precincts, and appoint judges of election.
2680. To have the superintendence of the poor.
2681. When may compound debt of county.
2682. Power to levy special tax; for what purposes to levy.
2683. May erect public buildings, when.
2684. May erect jail, etc, if there is money in treasury.
2685. Commissioners to put convicts to labor.
2686. Not to be interested in contract.
2687. May administer oaths.
2688. To provide a place for holding courts.
2689. Power to fill vacancies.
2690. Power to sell real estate.
2691. Legalizing sales heretofore made.
2692. Where two or more newspapers are printed.
2693 Must let public printing to lowest bidder.
2694. Legal notices must be printed in paper designated by.
2695. Appeals, when and how taken.

Sec. 2663. There shall be established in each organized county in this territory, a board of county commissioners to consist of three qualified electors, to be elected by the qualified electors at the general election in 1882 and biennially thereafter, and two of said board of commissioners shall constitute a quorum to do business. *Provided*, That the commissioners now in office, or hereafter appointed to said office, shall continue in office until a new board of commissioners shall be elected as above provided: *Provided*, That this section shall not affect the counties of Clarke, Thurston, Yakima, Kitsap, and Klickitat, as districted under the act in relation to the election of county commissioners, and defining their duties in the counties of Clarke, Thurston, Klickitat, Yakima, and Kitsap." Approved Nov. 9. 1877.

Sec. 2664. Where there are three or more election districts in one county, there shall not be two commissioners serving on the board from one precinct at the same time.

Sec. 2665. Whenever it shall become necessary to elect or appoint a commissioner to fill any vacancy occasioned by death, resignation or otherwise, the person so elected or appointed shall hold his office for the unexpired term for which his predecessor was elected, and until his successor is elected and qualified.

SEC. 2666. Before any commissioner shall enter upon the duties of his office, he shall take and subscribe an oath or affirmation before some person authorized to administer the same, faithfully to discharge the duties of a commissioner of the county in which he resides, and deposit the same with the clerk of the board of county commissioners of his county, to be by him filed in his office.

SEC. 2667. The board of county commissioners in the several counties in this territory may hold regular sessions at the seat of justice of their respective counties, commencing on the first Mondays of February, May, August and November, at each of which they may transact any business which may be required by law; but counties so desiring may omit the February and August terms.

SEC. 2668. The auditor of the county shall be the clerk of the board of county commissioners, and attend their meetings and keep a record of their proceedings.

SEC. 2669. The said board of county commissioners are hereby authorized to hold extra sessions when the business of the county may require the same, which extra sessions may be by adjourned terms from any regular term, the order therefor being entered on record in the minutes of such regular term of which it is a continuation, or by ten days, notice from two of the commissioners to the third, or by the written consent of the three commissioners filed with the county auditor: *Provided*, That no extra session shall exceed three days' and that due notice be given of the time of holding the term and the business to be transacted.

SEC 2670. The county commissioners shall each receive four dollars per day for each and every day they may be necessarily employed in transacting the business of the county, and ten cents per mile for every mile traveled in going to and returning from the meetings of said board or in the discharge of any official duty, to be computed by the nearest traveled route.

SEC. 2671. When two only of the members shall be present at the meeting of the board, and a division shall take place on any question, the matter under consideration shall be postponed to the next subsequent meeting.

SEC. 2672. The county commissioners of each county shall have and use a seal for the purpose of sealing their proceedings, and copies of the same when signed and sealed by the said county commissioners, and attested by their clerk, shall be admitted as evidence of such proceedings in the trial of any cause in any court in this territory; and until such seal shall be provided, the private seal of the chairman of such board of county commissioners shall be adopted as a seal.

SEC. 2673. The several boards of county commissioners are authorized and required:

1. To provide for the erection and repairing of court houses, jails and other necessary public buildings for the use of the county.

2. To lay out, discontinue or alter county roads and highways within their respective counties, and do all other necessary acts relating thereto according to law, except within the limits of incorporated cities and towns, whereby the terms of the acts of incorporation, jurisdiction over

the roads in the limits of said incorporations is vested in the corporate authorities thereof.

3. To license and fix the rates of ferriage; to grant grocery and other licenses authorized by law to be by them granted.

4. To fix the amount of county taxes to be assessed according to the provisions of law, and cause the same to be collected as prescribed by law.

5. To allow all accounts legally chargeable against such county not otherwise provided for, and to audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated to its benefit.

6. To have the care of the county property and the management of the county funds and business, and in the name of the county to prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law.

Sec. 2674. Real estate belonging to any county may be sold by an agent duly appointed by the order directing such sale, who shall have the same power as a commissioner appointed to sell real estate by the district or probate court.

Sec. 2675. The board of county commissioners shall cause to be recorded, in a book to be kept for that purpose, all their proceedings and determinations touching all matters properly cognizable before them, and all books, accounts, vouchers, papers and (accounts) touching the business or property of the county, shall be carefully kept by the clerk and open to the inspection of every person.

Sec. 2676. The county commissioners aforesaid, at their first session after the biennial election, shall elect one of their number to preside at the meetings of the board, and he shall sign all documents requiring the the signature of the board and the signature of such person as chairman of the board of county commissioners shall be as legal and binding as if the whole board had affixed their names: *Provided*, That in case such chairman shall be absent at any meeting of the board, all documents requiring the signature of the board shall be signed by both members present.

Sec. 2677. It shall be the duty of the board of county commissioners to provide offices for the sheriff, the county auditor and clerk of the district court, the probate court and county treasurer, and also to provide safe and convenient desks for the preservation and security of all the books and other documents in the several offices.

Sec. 2678. At the May session the board of county commissioners shall examine and compare the accounts and vouchers of the county auditor and county treasurer, count the funds in the county treasury, and shall make a full and accurate statement of the receipts and expenditures of the preceding year, and shall cause the same to be posted up at the court house door and at two other public places in their county, and if there shall be no court house, then at three public places in such county, and shall publish the same in some newspaper of such county, if there be any.

Sec. 2679. It shall be the duty of the board of county commissioners to divide their respective counties into election precincts, if not already divided, in such manner as shall be most convenient for the population, and to appoint a place for holding the election therein, and they shall create new precincts from time to time as the population may require.

On the petition of ten voters resident more than ten miles from any place of election, it shall be the duty of the board of county commissioners to establish a precinct and appoint judges and inspector therefor.

SEC. 2680. The board of county commissioners of the several counties of this territory are vested with the entire superintendence of the poor, in their respective counties, except when otherwise provided by law. And each of said commissioners during vacation of the board shall be authorized to contract for the support of any pauper until the next meeting of the board, upon satisfactory evidence that the person applying for relief is entitled to become a county charge.

SEC. 2681. The county commissioners of their respective counties shall have power to compound and release in whole or in part any debt due to their county, when in their opinion the interest of their county will not be prejudiced thereby, except in cases where they or either of them are personally interested.

SEC. 2682. The board of county commissioners of the several counties in this territory shall have no power to levy a special tax for county purposes except in the manner hereinafter provided, unless otherwise specially ordered by special laws.

SEC. 2683. When in the opinion of the county commissioners of any county the public good requires a court house, jail or other county building, they shall estimate the cost thereof and submit the same to the people of their county at the next general election, notice thereof being given at the same time and place as for other elections, when, if a majority of the voters of such county shall vote in favor of such special tax, the commissioners shall assess and cause to be collected such tax in the same manner as other county taxes are collected.

SEC. 2684. Nothing in this act shall be so construed as to prevent the county commissioners of any county from erecting any such court house, jail or other county buildings when there is in the treasury of their county a surplus fund sufficient for the erection and completion of such county buildings.

SEC. 2685. The county commissioners in their respective counties may order all persons who shall be confined in the county jails of their respective counties, convicted of any crime or misdemeanor, to work on the roads of their respective counties, under the direction of the sheriff; but such convicts shall not be put to labor at a greater distance from the jail or place of confinement than five miles: *Provided*, That if any such convict shall refuse to perform such labor he shall be kept in close confinement on bread and water. The sheriff having the custody of such convicted persons may, to secure them from escape, attach a ball and chain to said convicts.

SEC. 2686. No county commissioner shall directly or indirectly, be concerned in any contract for work to be done or materials to be furnished for the county, under the penalty of two hundred dollars, to be recovered by an action at law for the use of the county, and such commissioner shall moreover forfeit any compensation he was to receive on such contract.

SEC. 2687. The county commissioners are authorized and empowered to administer all oaths or affirmations necessary in discharging the duties of their office, and have the same power as justices of the peace to commit for contempt any witness refusing to testify before them.

SEC. 2688. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

SEC. 2689. In all cases of vacancy occuring in any of the county offices in this territory, either by death, resignation or otherwise, it shall be the duty of the county commissioners of the county in which such vacancy occurs, at the first session thereafter, or as soon thereafter as practicable, to appoint a suitable elector of the proper county to fill such vacancy; such officer to remain in, or hold the office to which he may have been appointed, until the first general election after his appointment.

SEC. 2690. County commissioners in counties who own land under the provisions of section 2286 of the revised statutes of the United States, or who by relocation of county seat, are possessed of land the proceeds of the sale of which would enable said counties to assist in providing county buildings are hereby authorized to sell at public auction at the court house door, after thirty days, previous notice given by publication in a newspaper of the county, or posted in five public places of the county and convey to highest bidder, for cash, any property, real or personal, belonging to the county, paying the proceeds into the county treasury for the purpose of paying for erection of public buildings.

SEC. 2691. All sales and conveyances heretofore made by order of any board of county commissioners of real estate within their respective counties are hereby ratified and legalized.

### COUNTY PRINTING.

SEC. 2692. In all counties where two or more newspapers are published it shall be the duty of the county commissioners to let the public printing to the lowest bidder.

SEC. 2693. They shall at their meeting in May advertise for proposals for all the public printing for the term of one year.

SEC. 2694. It shall be the duty of all county officers where the printing is contracted for in accordance with the provisions of this act, to cause all legal notices, and delinquent tax lists, to be advertised in the paper designated by the county commissioners.

### APPEALS.

SEC. 2695. Any person may appeal from the decision of the board of county commissioners to the next term of the district court of the proper district. Such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the county commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to, which notice shall be in writing and shall be delivered personally to the county commissioners, or left with the clerk of the board, and the party appealing shall give bond to the county with one or more securities, to be approved by such clerk, conditioned to pay all the costs which shall be adjudged against him on such appeal in the said district court. The practice regulating appeals in and writs of certiorari to justice's courts, shall so far as the same may be applicable govern in matters of appeal from the decision or order of the county commissioners court. And nothing herein contained shall be so construed as to prevent a party having a claim against any county in this territory, enforcing the collection thereof by civil action in any court of competent jurisdiction, after the same may have been presented and disallowed in whole or in part by the board of county commissioners of the proper county: *Provided*, That such action be brought within three months after such claim has been acted upon by said board.

## CHAPTER CCX.

### SUPPORT OF THE POOR.

SECTION
2696. Boards of county commissioners vested with the superintendence of the poor.
2697. By whom poor to be supported.
2698. Who to be first called on.
2699. When poor to be supported by the county.
2700. Minor shall be bound out.
2701. Provisions for a non-resident pauper.
2702. Residence of pauper to be proven.
SECTION
2703. Each commissioner authorized to contract in vacation.
2704. Resident entitled to relief; non-resident to be removed: how.
2705. After notice to leave county.
2706. Work-houses may be built.
2706. Penalty for bringing pauper into territory.

SEC. 2696. The board of county commissioners of the several counties of this territory are hereby vested with entire and exclusive superintendence of the poor in their respective counties: *Provided*, That this section shall not be so construed as to include any incorporated city or town having by its charter any of the powers enumerated in said section.

SEC. 2697. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grand children, brothers or sisters of such poor person, if they or either of them be of sufficient ability; and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, grandchild, sister or brother, when directed by the board of commissioners of the county where such poor person shall be found, whether such relative reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners for the use of the poor as aforesaid, before any justice of the peace, or any court having jurisdiction: *Provided*, That when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support from any relation except parent and child.

SEC. 2698. The children shall be first called on to support their parents, if there be children of sufficient ability; if there be none, the parents of the poor persons shall be next called on, and if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on; and if there be no brothers and sisters, the grand children of such poor person shall be called on, and then the grand parents; but married females whilst their husbands live shall not be liable to a suit.

SEC. 2699. When any poor person shall not have relatives in any county in this territory, as are named in the preceding sections, or such relatives shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require, out of the county treasury, and the county commissioners may either make a contract for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

SEC. 2700. When any minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because the parents or other relations, as aforesaid, are unable or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice to some respectable householder of the county, by written indenture, which shall bind such minor to serve as an apprentice, and shall in all respects be to the tenor and effect as required in the act concerning apprentices.

Sec. 2701. When any non-resident, or any other person not coming within the definition of a pauper, shall fall sick in any county in this territory, not having money or property to pay his board, nursing or medical aid, it shall be the duty of the commissioners of the proper county, on complaint being made, to give or order to be given, such assistance to such poor person as they may deem just and necessary; and if said sick person shall die, then the said commissioners shall give or order to be given to such person a decent burial; and the said commissioners shall make allowance for board, nursing, medical aid or burial expenses, as they shall deem just and equitable, and order the same to be paid out of the county treasury.

Sec. 2702. When application is made by any pauper to the board of county commissioners of any county in the territory, for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he has been a resident of said county for six months immediately preceding the day upon which such application was made.

Sec. 2703. Each of the commissioners shall be an ex-officio agent, authorized to contract during vacation of the board for the support of any poor person found in his county during such vacation.

Sec. 2704. When application is made by any pauper to the board of county commissioners as aforesaid, it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section he shall be entitled to all the relief provided by this chapter; but if on the contrary it shall appear to the satisfaction of said board that such pauper has not been a resident of said county agreeably to the provisions of section 2702 they shall proceed to remove from their county, at the expense of said county, such pauper to the county where such pauper may have his residence, or may, if they think best, issue a notice directed to some constable of the county; which notice said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county, and after so serving said notice by reading the same to said pauper, said constable shall, within five days thereafter, return the same to the said clerk of the board of county commissioners issuing the same, noting the time and manner of service.

Sec. 2705. After service of such notice as aforesaid, no pauper shall be entitled to relief from such county, unless the county commissioners shall deem it absolutely necessary.

Sec. 2706. The board of county commissioners of any county in this territory may, if they think proper, cause to be built or provided in their respective counties, work houses for the accommodation and employment of such paupers, as may from time to time become a county charge; and said workhouse and paupers shall be under such rules and regulations as said board of commissioners may deem proper and just. If any person shall bring and leave any pauper in any county in this territory, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by, and to the use of such county, in a civil action before any court having jurisdiction of the same.

## CHAPTER CCXI.

### COUNTY AUDITOR.

SECTION
2707. Election and canvassing votes for
2708. Qualification, oath of office and bond.
2709. Duties as clerk of board of county commissioners.
2710. Must audit all claims against county.
2711. Must draw warrants for claims allowed by courts.
2712. Must examine and settle accounts.
2713. Shall keep correct account with treasurer.
2714. Must each year make exhibit of condition of county.
2715. What said exhibit must show.
2716. Fees for making exhibit.
2717. May appoint deputies.
2718. May administer oaths.
2719. Must deliver to treasurer register of warrants issued.
2720. Must examine books of treasurer each month.
2721. County commissioners and auditor must count money in treasury.
2722. In May and November, auditor and treasurer must make a showing of financial condition of county.
2723. Not to practice as attorney; when not to hold any other county office.
2723. When commissioners may appoint person to act as auditor.
SECTION
2724. Shall publish proceedings of the board.
2724. Custodian of county seal.
2725. Must deliver to successor all books and papers.
2727. Duties as recorder.
2728. Recording deeds, grants, transfers and mortgages of real estate, mortgages of personal property, liens and bonds, etc., etc.
2729. Must keep a general index, direct and inverted.
2730. Maps and plats to be kept in well bound book, satisfaction of mortgage, bond, etc., to be noted in indices.
2731. When instrument is presented for record, must endorse time.
2732. Must indorse time; book and page where recorded.
2733. Must furnish abstract of title upon payment of fees.
2734. Penalty for neglect of duty.
2735. Not bound to record instrument until fees are paid.
2736. All books must be kept open for inspection of public.
2737. Copies of instruments recorded shall be admitted as *prima facie* evidence in all courts.

SEC. 2707. There shall be elected at each general election in each county in this territory, one county auditor, who shall have the qualification of an elector, and who shall continue in office for the term of two years and until his successor is elected and qualified; said county auditor shall be ex-officio clerk of the board of county commissioners and recorder of deeds and other instruments in writing, which by law are to be recorded in and for the county for which he may be elected. The election of said officer shall be conducted and the returns made in the manner and form prescribed by the law regulating elections: *Provided, however*, That if the person holding the office be a candidate for re-election, he shall be excluded from canvassing the returns of the votes for said office, and the certificate of election shall be made by the officers associated with the auditor as canvassers; if the two disagree the probate judge shall be called to canvass the votes for said office of county auditor.

SEC. 2708. Every auditor, within fifteen days after receiving his certificate of election, and before he shall enter upon the discharge of the duties of his office, shall take and subscribe an oath before an officer authorized to administer the same, faithfully and impartially to perform the duties of his office, as prescribed by law, to the best of his abilities; which oath shall be endorsed on the back of his certificate of election, recorded in a book kept for that purpose in his office, and filed in the office of the clerk of the district court of the district or sub-district including the county for which he may be elected. He shall also give a bond to his county, with good and sufficient sureties, in the penal sum of not less than three thousand dollars, the amount to be fixed and the sureties to be approved by the county commissioners of his county, conditioned that he will faithfully and impartially fulfill the duties of his office; which bond shall be filed in the office of the clerk of the proper district court including the county for which such auditor has been elected.

SEC. 2709. The county auditor, as clerk of the board of county commissioners, must: (1.) Record all the proceedings of the board; (2.) Make full entries of all their resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county; (3.) Record the vote of each member on any question upon which there is a division, or at the request of any member present; (4.) Sign all orders made and warrants issued by order of the board for the payment of money; (5.) Record the reports of the county treasurer of the receipts and disbursements of the county; (6.) Preserve and file all accounts acted upon by the board; (7.) Preserve and file all petitions and applications for franchises, and record the action of the board thereon; (8.) Record all orders levying taxes; and, (9.) Perform all other duties required by law or any rule or order of the board.

SEC. 2710. He shall audit all claims, demands or accounts against the county, or which by law are chargeable to said county, except such cost or fee bills which by law are to be examined and approved by some other judicial tribunal or officer. Such claims as it is his duty to audit shall be presented to the board of county commissioners for their examination and allowance. For claims allowed by the county commissioners as also for cost bills and other lawful claims, duly approved by the competent tribunal designated by law for their allowance, he shall draw a warrant on the county treasurer payable to the claimant or his order, bearing date from the time of and regularly numbered in the order of issue, and he shall carefully keep proper warrant books, and when a warrant is issued the stub shall be carefully retained, upon which shall be recorded the number, date, name of payee, amount, nature of claims or service briefly stated, and by whom allowed. He shall also retain all original bills endorsing thereupon claimant's name, nature of claim and action had and, if warrant be issued, dating and numbering said voucher or claim the same as the warrant. Nothing herein contained shall prevent claimants at the time of issuing said warrants from having the same broken or issued in smaller warrants by said auditor issuing two or more warrants in lieu of one. In all such cases, however, when broken warrants are issued, the auditor issuing the same is hereby required to reserve as many stub entries as he issues broken warrants, noting upon each stub the claim for which issued the same as in other cases, together with a note of the number of broken warrants, which, aggregated, amount to the entire claim allowed. The claimant must pay for each broken warrant the same fee the auditor is allowed by law for issuing warrants. All claims of the county auditor against the county for services shall be audited and allowed by the board of county commissioners as other claims are allowed, and the warrant on the county treasurer shall be signed by the president of the board, under the seal thereof. Said warrants shall in all other respects be issued, dated, numbered, registered and paid as any other county warrant. The word "county warrant," as herein designated, shall be synonymous with county order or county scrip. In this as well as all other laws of this territory, such terms are convertible and mean one and the same thing.

SEC. 2711. The auditor must examine and settle the accounts of all persons indebted to the county, or holding moneys payable into the county treasury, and must certify the amount to the treasurer, and upon the presentation and filing of the treasurer's receipt therefor, give to *such person a discharge, and charge the treasurer with the amount received by him.*

SEC. 2712. He shall keep an accurate account current with the treasurer of the county, and when any person shall deposit with him any receipt given by the treasurer for money paid into the treasury, he shall file such receipt and charge the treasurer with the amount thereof.

SEC. 2713. He shall at least once in each year make out a full and complete exhibit of the finances of the county. Such exhibit shall be made out immediately after the May term of the commissioner's court, and the county auditor shall cause the same to be published in some newspaper, if any is printed within the county; if not he shall post the same in a conspicuous place in his office.

SEC. 2714. Such exhibit shall show: (1.) The amount of tax assessed in the county the preceding year for territorial, county, road, bridge and school purposes; (2.) The amount of tax collected on such assessment; (3.) The amount of money received from other sources; (4.) The amount received into the treasury; (5.) The amount still due and not collected; (6.) The number of orders issued, their several amounts, and for what they were issued; (7.) The total amounts of orders redeemed; (8.) The amount of outstanding orders; (9.) The present condition of the treasury; (10.) Remarks.

SEC. 2715. The county commissioners shall allow the county auditor the same fees for making out such exhibit as he is allowed by law for similar services.

SEC. 2716. The county auditors of the several counties may appoint deputy auditors, who shall be appointed in writing, and shall, before entering upon the discharge of the duties of their office, take and subscribe an oath faithfully to perform the duties of their office, which oath shall be endorsed on the appointment and recorded in the office of the county auditor. The county auditors shall be responsible for the acts of their deputies, and revoke their appointment at pleasure.

SEC. 2717. Auditors and their deputies are authorized to administer oaths necessary in the performance of their duties, and in all other cases where oaths are required by law to be administered, and to take acknowledgments of deeds and other instruments of writing.

SEC. 2718. It shall be the duty of the county auditor, within two days after the adjournment of the board of county commissioners at any regular or special term of said court, to make out under his hand and seal of office a certified copy of the register of county warrants issued at such term of court, and forthwith deliver the same to the treasurer of the county, who shall record the same in a book to be kept by him for that purpose, and file and carefully preserve the original in his office for future reference.

SEC. 2719. The auditor must, between the first and tenth of each month, examine the books of the treasurer and see that the same have been correctly kept.

SEC. 2720. The board of county commissioners and auditor must, at the May and November terms of the board, count the money in the county treasury, and make and verify in duplicate statements, showing: (1.) The amount of money that ought to be in the treasury; (2.) The amount and kind of money actually therein.

SEC. 2721. The auditor and treasurer of each county must, on the second Monday in May and November, make a joint statement to the board of commissioners, showing the whole amount of collections (stating particularly the source of each portion of the revenue), from all sources, paid into the county treasury; the funds among which the same was distributed, and the amount to each; the total amount of warrants drawn and paid; the total amount of warrants drawn and unpaid, and accounts or claims audited or allowed and unpaid, and generally make a full and specific showing of the financial condition of the county.

SEC. 2722. The person holding the office of county auditor or deputy, or performing its duties, shall not practice as an attorney nor represent any person making any claim against the county, or seeking to procure any legislative or other action by said county board. And the county auditor during his term of office, and any deputy by him appointed, is hereby disqualified from performing the duties of any other county office or acting as deputy for any other county officer. Nor shall any other county officer or his deputy act as auditor or deputy, or perform any of the duties of said office.

SEC. 2723. In case the auditor is unable to attend to the duties of his office during any session of the board of county commissioners and having no deputy by him appointed in attendance, the said board may temporarily appoint a suitable person not herein disqualified to perform the auditor's duties.

SEC. 2724. It shall be the duty of the county auditor of each county, within fifteen days after the adjournment of each regular term, to publish a summary of the proceedings of the board of county commissioners at such term, in any newspaper published in the county, or having a general circulation therein, or the auditor may post copies of such proceedings in three of the most public places in the county. The seal of the county commissioners' court for each county, used by the county auditor as clerk to attest the proceedings of the board of county commissioners, shall be and remain in the custody of the county auditor as clerk of the said board, and said auditor is hereby authorized to use such seal in attestation of all his official acts, whether as clerk of said court, as auditor or recorder of deeds; and all certificates, exemplifications of records, or other acts by him performed as county auditor, certified under the seal of said county commissioners' court, heretofore made or hereafter to be made pursuant to this section, in this territory, shall be as valid and legally binding as though attested by a seal of office of the said county auditor.

SEC. 2725. Each auditor, on retiring from office, shall deliver to his successor the seal of office and all the books, records and other instruments of writing belonging to said office, and shall take his receipt therefor, and in case of the death of the auditor, his legal representatives shall deliver over the seal, books, records and papers as aforesaid.

### DUTIES AS RECORDER.

SEC. 2726. For the purpose of recording deeds and other instruments of writing, by law to be recorded, the county auditor must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the board of county commissioners. He has the custody of and must keep all books, records, maps and papers deposited in his office.

SEC. 2727. He must, upon the payment of his fees for the same, record separately, in large and well-bound separate books in a plain hand: (1.) Deeds, grants, transfers and mortgages of real estate, releasing mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved; (2.) Mortgages of personal property; (3.) Marriage contracts; (4.) Official bonds; (5.) Notices of mechanic's and other liens; (6.) Transcripts of judgments which by law are made liens upon real estate, notices of attachments upon real estate, and notices of the pendency of an action affecting the title to real estate, the title thereto, or possession thereof; (7.) Instruments describing or relating to the separate property of married women; (8.) Patents to lands—whether for donation, homestead, pre-emption claims or cash entries; (9.) Such other writings as are required or permitted by law to be recorded.

SEC. 2728. Every auditor must keep a general index direct and inverted. The index direct shall be divided into seven columns, with heads to the respective columns as follows:

| Time of reception | Grantor | Grantee | Nature of instrument | Volume and page where recorded | Remarks | Description of property |
|---|---|---|---|---|---|---|

He shall correctly enter in such index every instrument concerning or affecting real estate, the names of the grantors being in alphabetical order. The inverted index shall also be divided into seven columns, precisely similar, only that the names of the grantees shall be alphabetically arranged, and occupy the second column. He shall also keep a well-bound book in which shall be platted all maps of towns, villages, or additions to the same, within the county, together with the description, legend, acknowledgment or other writing thereon. He shall keep an index to such book of plats, which shall contain the name or names of the proprietor of such town or village, or addition, and the name of the town, village or addition.

SEC. 2729. Whenever any mortgage, bond, lien, or instrument incumbering real estate, has been satisfied, released or discharged, whether by written release across the record or upon the margin thereof, or by the recording of an instrument of release, or acknowledgment of satisfaction, the auditor shall immediately note in both the indices, in the column headed remarks, opposite to the appropriate entry, that such instrument, lien or incumbrance has been satisfied. And in all cases of the satisfaction or release of any recorded liens, mortgage, transcript of judgment, mechanic's liens, registered taxes or other incumbrance whatsoever, the auditor shall enter with red ink across the record of the instrument creating or evidencing such lien or incumbrance, the word "satisfied," with the day of the date of such satisfaction or release, and note the same in index of transcripts of judgment.

SEC. 2730. The auditor must file and record with the record of deeds, grants and transfers certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situated in the county of which he is recorder. Every such certified copy or partition, from the time of filing the same with the auditor for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders purchase and take with like notice and effect as if such copy or decree was a duly recorded deed, grant or transfer.

Sec. 2731. When any instrument, paper or notice, authorized by law to be recorded, is deposited in the county auditor's office for record, that officer must endorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and must record the same without delay, together with the acknowledgments, proofs and certificates written upon or annexed to the same, with the plats, surveys, schedule and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception, and the name of the person at whose request it was recorded.

Sec. 2732. He must also endorse upon such instrument, paper or notice, the time when and the book and page in which it is recorded, and must thereafter deliver it, upon request, to the party leaving the same for record, or to his order.

Sec. 2733. The auditor must, upon the applicatien of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages and all other instruments, papers or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate and the book and pages where they are recorded.

Sec. 2734. If any county auditor to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded is delivered for record: (1.) Neglects or refuses to record such instrument, paper or notice, within a reasonable time after receiving the same; or, (2.) Records any instruments, papers or notices untruly, or in any other manner than as hereinbefore directed; or, (3.) Neglects or refuses to keep in his office such indexes as are required by this act, or to make the proper entries therein; or, (4.) Neglects or refuses to make the searches and to give the certificate required by this act; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or, (5.) Alters, changes or obliterates any records deposited in his office, or inserts any new matter therein; he is liable to the party aggrieved for the amount of damage which may be occasioned thereby.

Sec. 2735. Said county auditor is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are if demanded paid or tendered.

Sec. 2736. All books of record, maps, charts, surveys and other papers on file in the county auditor's office must, during office hours, be open for inspection of any person who may desire to inspect them, and may be inspected without charge; and the auditor must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

Sec. 2737. Copies of all deeds or other instruments of writing, maps, documents and papers which by law are to be filed or recorded in the office of said county auditor, and all transcripts or exemplifications of the records of the proceedings of the board of county commissioners certified by said auditor under official seal, shall be admitted as *prima facie* evidence in all the courts of this Territory.

## CHAPTER CCXII.

### COUNTY TREASURER.

Section
2738. Election of; term of office.
2739. Oath and bond.
2740. To receive all moneys due.
2741. May appoint deputies.
2742. Office to be kept at the county seat.
2743. How his books are to be kept.
2744. Office to be subject to inspection and examination.
Section
2745. When to pay auditor's warrant.
2746. Interest on auditor's order.
2747. County orders to be paid by priority.
2748. Orders redeemed, deposited with auditor.
2749. May be removed by commissioners; when.
2750. Settlement of.
2751. Compensation of.

Sec. 2738. At the first election in each county, and every two years thereafter, there shall be elected a county treasurer, who shall have the qualifications of a voter, and shall continue in office for the term of two years, and until his successor is elected and qualified.

Sec. 2739. The county treasurer, before he enters on the duties of his office, shall take an oath faithfully to discharge the duties of his office, as prescribed by law; he shall, also, before he shall enter upon the duties of his office, give a bond to the county, with at least two sureties, residing in the county, in a penal sum of not less than double the amount of funds liable to come into the hands of the said treasurer during his term of office, the amount to be fixed, and the bond to be approved by the county commissioners of the proper county, conditioned that all moneys received by him for the use of the county shall be paid, as the commissioners shall from time to time direct, except where special provision is made by law for the payment of such moneys, by order of any court, or otherwise, and for the faithful discharge of his duties.

Sec. 2740. He shall receive all moneys due and accruing to his county and disburse the same on the proper orders, issued and attested by the county auditor.

Sec. 2741. County treasurers may appoint one or more deputies, and may take from them bond, with sureties; they shall have power to remove their deputies at pleasure, and every county treasurer and his sureties shall be liable for all official acts of his deputies.

Sec. 2742. The county treasurer shall keep his office at the seat of justice of his county, and shall keep the same open for transaction of business during business hours; and he and his deputy are authorized to administer all oaths necessary in the discharge of the duties of his office.

Sec. 2743. He shall so arrange and keep his books, that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts as well as the whole receipts and expenditures by one general account.

Sec. 2744. He shall at all times, keep his books and office subject to the inspection and examination of the board of county commissioners, and shall exhibit the money in his office to such board at least once a year, and as often as such board may require.

Sec. 2745. He shall pay all orders of the county auditor when presented, if there be money in the treasury for that purpose, and write on the face of such order the date of redemption, and his signature. If there be no funds to pay such order when presented, he shall endorse thereon: "not paid for want of funds," and the date of such endorsement, over his signature, which shall entitle such order thenceforth to draw legal interest: *Provided*, That such interest shall cease from the date of notice by publication in some newspaper, printed or circulated in his county, to be given by the county treasurer, that there are funds to redeem such outstanding orders, which notice such treasurer shall give in such case; and if there be no such newspaper, then by posting such notice at three public places in such county.

Sec. 2746. When the county treasurer shall redeem any order on which interest is due, he shall note on such order the amount of interest by him paid thereon, and shall enter on his account the amount of such interest, distinct from the principal.

Sec. 2747. County orders shall be redeemed by the treasurer according to the priority of the time of presentment.

Sec. 2748. The treasurer shall, on the first Monday in September, in each year, deposit with the county auditor all orders redeemed, who shall receipt therefor.

Sec. 2749. Whenever suit shall have been commenced on the official bond of any delinquent treasurer, he may be removed by the board of county commissioners of his county.

Sec. 2750. The county treasurer shall make complete settlement with the board of county commissioners, as required by law and shall, at the expiration of his term of office, deliver to his successor all public money, books and papers in his possession.

Sec. 2751. The county treasurer shall receive as a compensation for his services four per cent. on all moneys received and paid out by him for the county.

## CHAPTER CCXIII.

### COUNTY ASSESSORS.

Section
2752. Assessor to be elected, except in certain counties.
2753. Qualification of assessor.
2754. Shall take census biennially.
Section
2755. Power to appoint deputy.
2756. Compensation.
2757. Vacancy, how filled.

Sec. 2752. At the general election in this territory there shall be elected in each county a county assessor, who shall have the qualifications of a voter, and shall continue in office for two years and until his successor is elected and qualified; *Provided*, That in the counties of Clallam, Island, San Juan, Yakima, Klickitat, Jefferson, Chehalis, Pacific, Kitsap, Mason, Snohomish and Whatcom, the sheriffs in such counties shall be *ex-officio* assessors and as such shall perform the duties of such office.

Sec. 2753. The said assessor shall, before entering on the discharge of the duties of his office, give a bond to the county for which he was elected, with two or more sureties, to be approved by the board of county commissioners, in such penal sum as such board shall direct, conditioned for the faithful performance of his duties according to law, and shall take and subscribe an oath, faithfully and impartially to discharge the duties of his office according to law and to the best of his abilities.

SEC. 2754. In addition to the other duties of assessor prescribed by the general revenue law, it shall also be his duty at the time of making his annual assessment in 1883, and biennially thereafter, to take a census of all the inhabitants in their respective counties, comprising a complete list of all the white male inhabitants, their occupations, ages, nationality, whether married or single, citizens or aliens. Also a list of all female inhabitants, their ages, whether married or single; and also a list of all taxable half-breed Indians, negroes, mulattoes, Kanakas and Chinamen. The said lists shall be returned to the county auditor on or before the first Monday of May, to be filed in his office, and a copy of the same shall be forwarded by the county auditor to the territorial auditor, the substance of the same to be embodied by him in his report to the legislative assembly.

SEC. 2755. That it may be competent for any assessor to appoint some suitable person having the qualifications of a voter, his deputy or deputies, who shall perform all the duties of the assessor he represents, and for whose acts the said assessor shall be responsible; and said deputy or deputies shall, before entering on the discharge of the duties of his office, take and subscribe before the county auditor an oath faithfully and impartially to perform the duties devolving upon him, which oath shall be filed in the office of the county auditor.

SEC. 2756. Each assessor shall receive a compensation of five dollars per day, for each day actually and necessarily employed in the discharge of the duties of his office, and such reasonable compensation for the copy of the assessment roll as the board of county commissioners may allow, which compensation shall be paid out of any moneys in the county treasury not otherwise appropriated.

SEC. 2757. Any vacancy in the office of assessor shall be filled by the county commissioners at any session of their board.

## CHAPTER CCXIV.

### COUNTY SURVEYOR.

SECTION
2758. Election and qualification.
2759. May appoint deputies; surveyor's certificate *prima facie* evidence; when interested, commissioners to appoint.
2760. To execute all surveys required.
2761. To keep record, field notes, and furnish copies.
SECTION
2762. Fees of.
2763. When to furnish chainmen and markers.
2764. Vacancy; how filled.
2765. To procure certain field notes; papers to successors.

SEC. 2758. The qualified electors in each organized county in this territory may at the next election, and biennially thereafter, elect a county surveyor, who shall reside in the county for which he shall have been elected, and shall, previous to his entering upon the duties of his office, take and subscribe an oath or affirmation, before the county auditor of his proper county, to faithfully and impartially discharge the same; and shall give bond to the board of county commissioners of the proper county, in the sum of one thousand dollars, conditioned for the faithful performance of his duties.

SEC. 2759. The said surveyor may appoint such number of deputies as he may think proper, who shall severally take an oath or affirmation of office, and for the faithful performance of whose duties the said surveyor shall be responsible. The certificate of the county surveyor, or of his deputies, shall be admitted as *prima facie* evidence in any court within this territory, but the same may be explained or rebutted by other evidence. And if said surveyor, or either of his deputies, be interested in any tract of land, a survey of which may become necessary by this chapter, such survey may be executed by any competent person, appointed by the board of county commissioners for that purpose.

SEC. 2760. It shall be the duty of said surveyor, by himself or his deputies, to execute any survey which may be required by any court, or upon application of any individual or corporation, within a reasonable time.

SEC. 2761. The said surveyor shall keep a correct record of all surveys made by him or his deputies, in a suitable book to be provided by him for that purpose, which he shall transmit to his successor in office; he shall also number such surveys progressively, and shall preserve a copy of the field notes and calculations of each survey, endorsing thereon its proper number; a copy of which, and also a fair and accurate plot, together with a certificate of survey, shall be furnished to the party for whom the survey shall have been made.

SEC. 2762. The said surveyor and his deputies may demand and receive for their services the following fees, to wit:—For a half, or fraction less than one half day's work, two dollars and fifty cents; for every day's work actually employed, five dollars; and for every mile traveled in going to and returning from work, the sum of ten cents; for copy of a plat of land, or certificate of survey, fifty cents; making out a complete report of any road, including field notes, one dollar; if such survey exceeds five miles, two dollars. In all surveys made by authority of the board of county commissioners, or any board of trustees, chain-bearers and axe-men shall receive, per day, three dollars.

SEC. 2763. If the party for whom the survey is made does not furnish the chain-men and markers, then the surveyor or his deputies may employ the necessary chain-men and markers, and shall receive for each chain-man and marker so employed, the sum of three dollars per day; and each chainman and marker, before entering upon the duties assigned them, shall take an oath or affirmation, before the surveyor or his deputy, faithfully and impartially to discharge the duties of chainman or marker, as the case may be.

SEC. 2764. If at any time the office of county surveyor shall become vacant, the board of county commissioners may cause such vacancy to be filled by appointment; the person so appointed to give bond, and take and subscribe an oath or affirmation, in the same manner as provided for in section 2758.

SEC. 2765. It shall be the duty of such surveyor, whenever directed so to do, by the board of county commissioners, to procure a copy of the original field notes of the townships in his county, at the expense of the county, and have the same recorded, and hand them, as well as all other papers, maps, books and charts belonging to his office over to his succesor.

## CHAPTER CCXV.

### SHERIFF [SEE ASSESSOR.]

SECTION
2766. Election; term of office and bond.
2767. Of the appointment of deputies.
2768. Powers of deputy, same as sheriff.
2769. Duties of sheriff: may call aid of county.
2770. No sheriff to practice law.
2771. Sheriff may be fined for neglect of duty.

SECTION
2772. No sheriff liable for damages unless fees tendered.
2773. How a vacancy in the office of sheriff filled.
2774. Certificate of election, and bond filed in auditor's office.

Sec. 2766. There shall be elected in each county in this territory, a sheriff, who shall possess the qualifications of a voter, and hold his office for the term of two years, and shall, before he enters upon the duties of his office, execute a bond, with at least three sureties, in such penal sum, not less than two thousand dollars, nor more than five thousand dollars, to be approved by the board of county commissioners, in open court, or by the county auditor during vacation, subject to the approval of said board at their next meeting, and filed in the office of said county auditor.

Sec. 2767. Each sheriff may appoint as many deputies as he may think proper, for whose official acts he shall be responsible to the amount of their bond, and may revoke such appointments at his pleasure; and persons may also be deputed by any sheriff, in writing, to do particular acts; and the sheriff shall be responsible on his official bond for the default or misconduct in office of his deputies.

Sec. 2768. Every deputy sheriff shall possess all the power, and may perform any of the duties prescribed by law to be performed by the sheriff, or by his deputies; shall serve or execute, according to law, all process, writs, precepts and orders, issued or made by lawful authority, and to him directed, and he shall attend upon all courts of record at every term.

Sec. 2769. It shall be the duty of sheriffs and of their deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

Sec. 2770. No sheriff, deputy sheriff or coroner, shall appear or practice as attorney in any court, except in defense of themselves or their deputies; and either of said officers, for a violation of this section, shall forfeit a sum not exceeding fifty dollars.

Sec. 2771. Whenever any sheriff shall neglect to make due return of any writ or other process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal; such fine, however, not to exceed two hundred dollars, and also, to an action for damages to the party aggrieved.

Sec. 2772. No sheriff, deputy sheriff, or coroner, shall be liable for any damages for neglecting or refusing to serve any civil process unless his legal fees and an indemnifying bond if he requires one are first tendered him.

Sec. 2773. When a vacancy happens in the office of sheriff, the county auditor shall cause three advertisements to be put up in conspicuous places, in each election precinct in his county, stating the office to be filled, the time and place of holding the election, which time shall be at least ten days from the putting up of such advertisement, unless such vacancy shall occur within six months of the general election, then it shall be the duty of the board of county commissioners to fill such vacancy by appointing some person who shall possess the same qualifications as prescribed in section 2766, be subject to the same liabilities, and shall continue to perform the duties of said office until a sheriff is elected and qualified,

Sec. 2774. Every sheriff shall, before he enters on the duties of his office, cause his certificate of election or appointment, with the oath of office indorsed thereon, and his bond with the approval thereon to be recorded in the office of the auditor of the county.

## CHAPTER CCXVI.

### CORONERS.

Section
2775. Election; term of office and bond.
2776. To act as sheriff, when.
2777. Inquest, when and where held.
2778. Juror failing to attend to be fined.
2779. Four persons may constitute jury.
2780. Coroner may subpœna witnesses, surgeon, etc.
2781. Witnesses compelled to attend.
2782. Of the verdict of the jury.
2783. When testimony to be reduced to writing.
2784. Proceeding to be returned to clerk.
2785. When a coronor to issue a warrant of arrest.
2786. Form of coroner's warrant.
Section
2787. Coroner's warrant to be served in any county.
2788. When to provide for burial of deceased.
2789. Money of deceased delivered to treasurer.
2790. Disposition of money by treasurer.
2791. Money to be paid on demand of legal representatives
2792 Auditing the account of the coroner.
2793. Justices of the peace may act as coroner.
2794. Fees of coroner.
2795. Justice acting as coroner, entitled to same fees.

Sec. 2775. There shall be elected at each biennial election, in every county in this territory, a coroner, who shall hold his office for two years and until his successor shall be elected and qualified, and shall take an oath of office, and file a copy thereof. He shall execute a bond to his county in the sum of one thousand dollars, conditioned for the faithful performance of the duties of his office, to be approved by, and filed with the county auditor.

Sec. 2776. The coroner shall perform the duties of sheriff, in all cases where the sheriff is interested, or otherwise incapaciated from serving; and whenever the coroner acts as sheriff he shall possess the powers and perform all the duties of sheriff, and shall be liable on his official bond, in like manner as a sheriff would be, and shall be entitled to the same fees as are allowed by law to the sheriff for similar services; but before serving any process, as required by this section, the coroner shall give an additional bond, in double the amount of the sum sued for or damages claimed.

Sec. 2777. When information is given to any coroner that the body of any person, the cause of whose death is unknown, and there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, he shall go to the place where the body is, and forthwith summon six good and lawful persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of the deceased is, to inquire into the cause of the death.

Sec. 2778. Every person summoned as a juror, who shall fail to appear without having a reasonable excuse, shall forfeit any sum not exceeding twenty dollars, to be recovered by the coroner in the name of the territory, before any justice of the peace in the proper county, and when collected to be paid over to the county treasurer for the use of the county.

SEC. 2779. When four or more of the jurors attend they shall be sworn by the coroner to inquire who the person was, and when, where and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict therein, according to the evidence afforded them, or arising from the inspection of the body.

SEC. 2780. The coroner may issue subpœnas for witnesses, to the sheriff or any constable of the county, returnable forthwith, or at such time and place as he may appoint, which may be served by any competent person. He must summon and examine as witnesses, on oath, by him administered, every person who, in his opinion, or that of any of the jury, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body, and give, under oath, a professional opinion as to the cause of the death.

SEC. 2781. A witness served with a subpœna may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpœna issued by a justice of the peace.

SEC. 2782. After inspecting the body and hearing the testimony, the jury shall render their verdict and certify the same, in writing, signed by them, and setting forth who the person killed is, if known, and when, where and by what means he came to his death; and if he was killed or his death occasioned by the act of another, by criminal means, who is guilty thereof, if known.

SEC. 2783. In all cases where murder or manslaughter is supposed to have been committed, the testimony of witnesses taken before the coroner's jury shall be reduced to writing by the coroner, or under his direction, and he shall also recognize such witnesses to appear and testify at the next term of the district court of the county, and shall forthwith file the written testimony, inquisition and recognizance with the clerk of such court.

SEC. 2784. If, however, the person charged with the commission of the offense be arrested, the coroner shall deliver the same, with the testimony taken to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statements taken before him, and the recognizance to the clerk of the district court of the county.

SEC. 2785. If the jury find that the person was killed and the party committing the homicide be ascertained by the inquisition, and be not in custody, the coroner shall issue a warrant for the arrest of the person charged, returnable forthwith to the nearest justice of the peace, judge, or committing magistrate.

SEC. 2786. The coroner's warrant shall be in substantially the following form:

UNITED STATES OF AMERICA, } ss.
Territory of Washington }

To any sheriff or constable of the county:

An inquisition having been this day found by the coroner's jury, before me, stating that A B has come to his death by the act of C D, by criminal means, (or as the case may be, as found by the inquisition,) you are therefore commanded, in the name of the United States of America, forthwith to arrest the above named C D, and take him before the nearest or most accessible magistrate in this county.

Given under my hand this — day of —, A. D, 18—. E F,
Coroner of the county of ——.

Sec. 2787. The coroner's warrant may be served in any county, and the officers serving it shall proceed thereon, in all respects, as upon a warrant of arrest.

Sec. 2788. In all cases where no demand shall be made by the friends of the deceased for the body for burial the coroner shall provide in a suitable manner, at the expense of the estate of the deceased, if there be sufficient to pay the same; if not, at the expense of the county.

Sec. 2789. The coroner must within thirty days after the inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against the coroner to recover the same, by a civil action in the name of the county.

Sec. 2790. Upon the delivery of money to the treasurer, he shall place it to the credit of the county. If it be other property, he shall, within thirty days, sell it at public auction, upon reasonable public notice, and shall, in like manner, place the proceeds to the credit of the county.

Sec. 2791. If the money in the treasury be demanded within six years by the legal representatives of the deceased, the treasurer shall pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter, or the same may be so paid at any time thereafter, upon the order of the board of county commissioners of the county.

Sec. 2792. Before auditing and allowing the account of the coroner, the board of county commissioners shall require from him a statement in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer.

Sec. 2793. If the office of coroner be vacant, or he be absent, or unable to attend, the duties of his office may be performed by any justice of the peace in the county, with the like authority, and subject to the same obligations and penalties as the coroner.

Sec. 2794. A coroner shall receive ten dollars for each inquest that he may hold, and necessary burial expenses; and also ten cents per mile for each mile necessarily traveled, to hold any inquest; to be paid by the county, and to be audited and allowed as other county charges.

Sec. 2795. A justice of the peace, acting as coroner, shall be entitled to the same fees, payable in the same manner.

## CHAPTER CCXVII.

### CONSTABLES.

Section
2796. Constable, when and where elected.
2797. Vacancies, how filled.
2798. Election of, how conducted.

Section
2799. Constable to take an oath.
2800. Shall give bond.
2801. Duties of.

Sec. 2796. At each general election, there shall be elected by the qualified electors of each precinct in the several organized counties of this territory, as many constables as there are justices of the peace elected, or authorized to be elected, in such precinct.

Sec. 2797. All vacancies existing in the offices of constable, whether happening by death, resignation or failure to elect or otherwise, may be filled by appointment by the board of commissioners of the proper county; and every person so appointed shall hold his office until the next election.

Sec. 2798. The election of constables shall be conducted, and the return of such election made, and certificates of election issued in the same manner as in elections of justice of the peace.

Sec. 2799. Every person elected or appointed a constable, shall, within twenty days after receiving his certificate of election, take an oath before any person authorized to administer oaths, that he will support the constitution of the United States, and the laws of this territory, and faithfully discharge and perform the duties of his office as constable, according to the best of his ability. Such oath shall be endorsed on the back of the certificate of election, or appointment, and filed, together with the certificate, in the office of the auditor of the proper county.

Sec. 2800. Every person elected or appointed to the office of constable, shall, within the time prescribed for filing his oath of office, enter into a bond to the proper county, with two or more sureties, residents of the county, to be approved by the county auditor; in the sum of one thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all moneys received by him by virtue of his office; and in every respect discharge all the duties of constable according to law. The auditor shall endorse thereon his approval of the sureties therein named, and shall file the same in his office.

Sec. 2801. Any constable may within his county serve any writ, process or order, lawfully directed to him by any justice of the peace, judge of probate, or coroner, and generally do and perform all acts, by law required of constables. It shall be the duty of all constables, and all sheriffs, to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions.

## CHAPTER CCXVIII.

### OF WRECK MASTER.

Section
2802. When and in what counties wreck master to be elected.
2803. Wreck master to qualify and give bond.
2804. Certain wrecked property does not belong to territory.
2805. Duty of wreck master in reference to.
2806. Proceedings in case property be perishable.
2807. How shall be sold.
2808. Proceedings when claimed within one year.
2809. Bond to be given by claimant.
2810. Disposition of such bond.
2811. Costs of defendant to be deducted from damages recovered.
2812. Duty of officer upon order to deliver wrecked property.
2813. Wreck master to render aid and assistance; when.
2814. Magistrates, constables, etc., to assist wreck master.
Section
2815. Compensation of persons rendering assistance.
2816. Salvage shall not exceed a certain amount.
2817. Proceedings if salvage not settled by agreement.
2818. Justice of peace appoint persons to settle salvage.
2819. Powers and duties of such appraisers.
2820. Compensation of appraisers.
2821. Wreck master to give notice of wrecked property.
2822. What such notice shall contain.
2823. Liability of wreck master.
2824. Penalty for taking goods from stranded vessel.
2825. Penalty for defacing marks on wrecked property, etc.
2826. If property not claimed within a year.
2827. Duty to prosecute for violation of this chapter.
2828. Not to conflict with "act relative to scows, boats, etc."

Sec. 2802. On the next general election, the qualified voters of Pacific, Chehalis, Thurston, King, Jefferson, Island, San Juan, Whatcom, Pierce, Kitsap and Clalm counties, shall elect a wreck master, whose duties shall be as hereinafter provided.

Sec. 2803. Every wreck master before entering upon the duties of his office, shall be sworn faithfully to discharge his duty, and shall give bond to the judge of probate for the county in which he resides, with sufficient security to the acceptance of said judge, for the faithful discharge of his duty, and every person having a claim against any such wreck master, for any breach or neglect of his official duty, may have a remedy therefor by a suit on his bond to be prosecuted in the name of the judge of probate, in like manner as bonds given to judges of probate by administration of the estate of deceased persons.

Sec. 2804. No ship, vessel, boat, nor any goods, wares and merchandise, that shall be cast by the sea upon the land, shall be deemed to belong to the territory as wrecked property, but may be recovered by the owner, consiguee, or person having charge thereof, at the time of the happening of the disaster by which the wreck was occasioned, upon the payment of a reasonable salvage and necessary expenses.

Sec. 2805. The wreck master in each county to which the provisions of this act are applicable, in which any wrecked property shall be found, when no owner or other person entitled to the posession of said property shall appear. shall have power, and it shall be his duty, to pursue all necessary measures for saving and securing such property, to take possession thereof, in whose hands soever the same may be, in the name of the people of this territory, to cause the value thereof to be appraised by disinterested persons, and keep the same in some safe place, to answer the claims of such persons as may thereafter appear entitled thereto.

Sec. 2806. If the property so saved shall be in a perishable state so as to render the sale thereof expedient, it shall be the duty of the wreck master to apply to some judge of the United States district court, or justice of the peace, by a petition supported by an affidavit of the facts for an order authorizing such sale; and if the judge or justice of the peace to whom such application shall be made, shall be satisfied that a sale of the property would be most beneficial to the parties interested, it shall be the duty of the officer to whom the application is make to make the order so applied for.

Sec. 2807. If such order be made, the officer having custody of the property directed to be sold, shall sell the same at public auction, at the time and in the manner that shall be specified in the order; and the proceeds of such sale, deducting the expenses thereof, as the same shall be made by the officer making such order, shall be paid to the treasurer of the county.

Sec. 2808. If within one year after such recorded property shall have been found and saved, any person shall claim the same or the proceeds thereof, as owner or consignee or the agent of the owner or consignee, and shall establish his claim by evidence, which any United States judge or justice of the peace shall deem to be satisfactory, it shall be the duty of such officer to make an order directing the wreck master in whose possession the property may be, to deliver the property if not sold as above, or to pay the proceeds arising from the sale thereof, if sold as aforesaid, to the claimant, upon the payment by him of a reasonable salvage, and all necessary expenses incurred in the preservation and keeping of said property.

SEC. 2809. No order shall, however, be made unless the claimant shall deliver to such officer a bond, with one or more sufficient securities, to be approved by said officer, conditioned for the payment of all damages that may be recovered against such claimant or his representatives within two years after the sale of such property by any person establishing his title as owner of the property or proceeds to be delivered; said bond shall be taken in the name of the United States of America, and the penalty shall be double the value of the property or proceeds before mentioned.

SEC. 2810. The bond shall be filed in the office of the judge of probate court for the county in which it shall be taken. If it shall be forfeited, the party injured by such forfeiture shall be entitled to recover, in the proper court, the full amount of the condition of said bond together with costs of suit.

SEC. 2811. If the plaintiff prevail in such suit, there shall be deducted in addition to the salvage and expense charged on the property, from the damages to be recovered, all the costs of the defendant making his defense.

SEC. 2812. It shall be the duty of every officer to whom any order, duly made for the delivery of wrecked property, on the payment of its proceeds shall be directed, to present to the claimant exhibiting such order, a written statement of the claims for salvage and expenses on such property and proceeds. If the claimant shall refuse to allow such claims, the amount of such salvage and expenses shall be adjusted in the manner hereinafter provided, and in all cases, after the payment, or tender of the paymant of such salvage and expenses as agreed to, or adjusted, the officer in whose custody such property or proceeds shall be, shall deliver or pay the same according to the order directed to him.

SEC. 2813. It shall be the duty of the wreck masters in the several counties in which they shall be appointed, to give all possible aid and assistance to all vessels stranded on the coasts of their respective counties, and to the persons on board the same, and to use their utmost endeavors to save and preserve such vessels and their cargoes, and all goods and merchandise that may be cast by the sea upon the land, and in the performance of their duties they shall employ such and so many men as they shall think proper.

SEC. 2814. It shall be the duty of all magistrates, constables and citizens, to aid and assist the wreck masters when required in the discharge of their duties.

SEC. 2815. All sheriffs, wreck masters, and all persons employed, and all other persons aiding and assisting in the recovery and preservation of wrecked property, shall be entitled to a reasonable allowance as salvage for their services, and to all expenses incurred by them in the performance of such services, out of the property saved, and the officer having the custody of such property shall detain the same until such salvage and expenses shall be paid.

SEC. 2816. The whole salvage that shall be claimed in any case, shall not exceed one half of the value of the property or proceeds on which such salvage shall be charged; and every agreement, order or adjustment allowing a greater salvage, shall be void.

Sec. 2817. If in any case the amount of salvage and expenses on property saved shall not be settled by agreement of the parties, the owner or consignee of such property, or the master or supercargo having charge thereof, at the time the same was wrecked, or a claimant having an order for its delivery, may apply to any justice of the peace for the county in which such property shall be, for the appointment of suitable persons as appraisers, to adjust and settle the amount of such salvage and expenses.

Sec. 2818. It shall be the duty of such justice of the peace, to whom such application shall be made, by an order under his hand and seal, to appoint three disinterested freeholders of the county to adjust and settle the salvage and expenses.

Sec. 2819. The persons so appointed, before they enter on the performance of their duties, shall be sworn to perform faithfully and impartially the duties of their trust, before any officer authorized to administer oaths. They shall have power to issue compulsory process for the attendance of witnesses, who shall attend or be produced, and their decision or that of any two of them under their hands, as to the amount of salvage and expenses that ought to be paid, and the sums to be paid to each person entitled to share in such salvage, or claiming such expenses, shall be final and conclusive.

Sec. 2820. The fees and expenses of the appraisers shall be paid by the person upon whose application they shall have been appointed, and shall be a charge on the property saved; each appraiser shall be entitled to three dollars for each day's attendance, and to a sum not exceeding two dollars for his daily expenses.

Sec. 2821. Every wreckmaster into whose possession any wrecked property shall come, shall immediately thereafter publish a notice directed to all parties, for at least four weeks in succession, in one or more of the newspapers printed in this territory.

Sec. 2822. Every such notice shall contain a minute description of the wrecked property and of every bale, bag, box, cask, piece or parcel thereof, and of the marks, brands, letters and figures on each; and shall state where such wrecked property then is, and its actual condition, and the name, if known, of the vessel from which it was taken or cast on shore, and of the master and supercargo of such vessel, and the place where such vessel then is, and its actual condition; and the expenses of publishing every such notice shall be charged on the property or proceeds to which such notice shall relate.

Sec. 2823. Every wreck master or other officer who shall detain in his hands any wrecked property, or the proceeds thereof, after the salvage and expenses chargeable thereon shall have been agreed to or adjusted, and the amount thereof shall have been paid or tendered to him, or who shall be guilty of any fraud, embezzlement or extortion, in the discharge of his duties, or who shall in any manner violate the provisions of this act, shall forfeit treble damages to the party injured, and shall be deemed guilty of a misdemeanor.

Sec. 2824. Every person who shall take away goods from any stranded vessels, or goods cast by the sea upon the land, or found in any bay or creek, or who shall knowingly have in his possession any goods so taken or found, and shall not notify the same to the wreck master of the county where the same shall have been found, within forty-eight hours after the same shall have been taken by him, or have come into his possession, shall forfeit treble the value of the goods so taken or kept by him to the owner or consignee thereof, and shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, at the discretion of the court by which he shall be tried.

Sec. 2825. Every person who shall deface or obliterate the marks on wrecked property, or in any manner disguise the appearance with intent to prevent the owner from discovering its identity, and every person who shall destroy or suppress any invoice, bill of lading, or other document tending to show the ownership of wrecked property, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, the fine not to exceed two thousand dollars, the imprisonment three years.

Sec. 2826. If, within a year after wrecked property shall have been saved, no person shall have appeared to claim the same, or if, within three months after a claim shall have been preferred, the salvage and expenses on such property shall not have been commenced it shall be the duty of the wreckmaster to sell the same at public auction, and to pay the proceeds of such sale, deducting salvage and expenses, into the treasury of this territory, for the benefit of the parties interested, but in no case shall any deduction of salvage and expenses be made, unless the amount thereof shall have been settled upon due proof, before some court of record of the county in which the property shall have been saved; a copy of which order, and the evidence in support thereof shall be transmitted by the officer making it to the territorial treasurer.

Sec. 2827. It shall be the duty of all judges, sheriffs, justices of the peace, coroners, constables, and wreckmasters to present all offenses against the provisions of this chapter, that shall come to their knowledge within their respective counties, to the grand jury at the next term of the United States district court therein.

Sec. 2828. Nothing in this act shall be so construed as to conflict with an act entitled, "An act relative to scows, boats, skiffs, canoes and water-craft". All wreckmasters elected under this act shall hold their office during the term of three years, and until their successors are elected and qualified.

## CHAPTER CCXIX.

### REVENUE LAW.

### PROPERTY LIABLE TO TAXATION.

Sec. 2829. All property, real and personal, within the territory, except the property of the United States, of the territory of Washington, of municipal corporations, of school districts, of burial grounds, not owned or controlled for speculative purposes, household furniture to the amount of two hundred dollars in value, for each family, all wearing apparel in actual use, and food provided for the family, not to exceed one year's supply, shall be subject to taxation, in the manner hereinafter provided.

## CHAPTER CCXX.

### DEFINITIONS—TERMS AND PHRASES DEFINED.

Sec. 2830. Whenever the terms mentioned in this section are employed in this act, they are employed in the sense hereafter affixed to them, to-wit:

First. The word "property," includes moneys, credits, dues, stocks, bonds, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership.

Second. The term "real estate" includes: (1.) The ownership of, claim to, possession of or right to the possession of land. (2.) All mines, minerals and quarries, in and under the land, and timber of natural growth on the land, and all rights and privileges appertaining thereto. (3.) Improvements.

Third. The term "improvements" includes: (1.) All buildings, structures, fixtures, fences, clearings and improvements made, erected upon, or affixed to the land. (2.) All fruit, nut-bearing, or ornamental trees and vines, not of natural growth. (3.) The term "personal property" includes everything which is the subject of ownership not included within the meaning of the term real estate. (4.) The term of "full cash value" means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor. (5.) The words "him" or "his" shall be understood to mean her or hers, when property belonging to a female is assessed. (6.) The words "county," "auditor," "treasurer," "assessor," or "sheriff," when used in this act shall be understood to apply to each county, respectively.

## CHAPTER CCXXI.

### MANNER OF MAKING ASSESSMENTS.

SECTION
2831. Two assessment districts created; taxpayer to furnish detail list of property; penalty for refusal.
2832. Assessment roll and what shall contain.
2833. Each description and improvements to be assessed separately.
2834. Verification of detail lists.
2835. Penalty for refusing to make oath to statement.
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2870. Application of poll-tax.
2871. Returns of assessor; what must show.
2872. Must complete his assessment, when.

SEC. 2831. For the purpose of this act, this territory shall be divided into two districts. The counties of Stevens, Whitman, Columbia, Walla Walla, Yakima, Spokan, Klickitat and Garfield, shall constitute the first district, and all other counties shall constitute the second district. In the first district, the assessor of each county shall, between the first Monday in April, and the first Monday in July in each yerr and in the second district between the first Monday in February and the first Monday in May in each year, ascertain by diligent inquiry the names of all persons liable to taxation in his county and also all the taxable personal property and all real estate therein, and make out an assessment roll of all taxable property and appraise the same according to the provisions of the statutes relating thereto. Each assessor shall require every person liable to be taxed in his county when personally called upon; to furnish him a list of his real estate situated in his county, liable to taxation, and a list of all personal property owned by every such person liable to taxation, that he had in the first district on the first Monday of April, at 12 o'clock meridian, and in the second district on the first Monday of February, at 12 o'clock meridian, stating the same in detail, and shall require such person to make oath that to the best of his knowledge and belief such list contains a full and true account of all his property liable to be taxed in his county, in the first district on the first Monday of April, at 12 o'clock meridian, and in the second district on the first Monday of February at 12 o'clock meridian, and if any person shall refuse to furnish such list or to swear to the same, when required so to do by the assessor, such person shall forfeit and pay to the assessor, for the use of the county, the sum of fifty. dollars, which sum may be recovered by action in any court having jurisdiction of matters of debt or contract to the amount of fifty dollars and costs of suit; such suit to be prosecuted by, and in the name of the county.

SEC. 2832. The assessor shall set down in an assessment roll, to be prepared by himself, in separate columns and according to the best information he can obtain: (1.) The names alphabetically arranged of all persons subject to taxation in his county, and numbers of the road and school districts of which each person assessed is a resident. (2.) A description of each tract or parcel of land to be taxed, specifying under separate heads the township, range, and section, and the number of the school and road district in which the land lies, or if divided into lots and blocks, then the number of the lot and block. (3.) The number of acres and parts of an acre, as near as the same can be ascertained, unless the land be divided into lots and blocks. (4.) The number of acres and parts of acres in each parcel of land except town or city lots, that are improved or cultivated. (5.) The full cash value of the improvements upon each lot or parcel of land assessed. (6.) The full cash value of each lot or parcel of land assessed. (7.) The full cash value of all the taxable personal property owned by or to be taxed against such persons, as provided by law. (8.) The total valuation of all property assessed, real and personal. (9.) The amount of road poll tax of each person or firm liable for the same. (10.) The amount of poll tax of each person or firm liable for the same.

SEC. 2833. The assessor must assess each description of land separately, and the improvements upon the same separately.

SEC. 2834. The detail lists or statements provided for in the preceding section, must have affixed thereto an affidavit, substantially as follows:

TERRITORY OF WASHINGTON, } ss.
COUNTY OF ——— }

I, —, do solemnly swear that I am a resident of the county, (naming it) that the above list contains a full and correct statement of all property subject to taxation, and in this county, which I, or any firm of which I am a member, or any corporation, association or company, of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed or controlled, (if in the first district, on the first day of April; if in the second district, on the first Monday in February, 18—, at 12 o'clock, meridian.) and which is not already assessed for said year, and that I have not in any manner whatever transferred, or disposed of any property, or placed any property out of said county or my possession, for the purpose of avoiding any assessment upon the same, or of making this statement. (Signed.) ————,

Residence, ————,

Subscribed and sworn to before me, this — day of —, 188—.

————,

Sec. 2835. If any person, after demand made by the assessor, neglects or refuses to give under oath, the statement herein provided for, or to comply with the requirements of this act, such person shall be subject to a fine of not less than one hundred dollars, nor more than five hundred dollars, to be recovered by suit in the name of the county, or by indictment, and no property shall be exempt from executions issued on judgments by suit, or indictments under the provisions of this section.

Sec. 2836. If the owner or claimant of any property, not listed by another person, is absent or unknown, the assessor must list and make an estimate of the value of such property.

Sec. 2837. If the name of the absent owner is known to the assessor, the property must be assessed in his name; if unknown the property must be assessed to "unknown owners."

Sec. 2838. All personal property consigned for sale to any person within the territory, from any place out of the territory, must be assessed as other property.

Sec. 2839. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name, and the assessment entered on a separate line from his individual assessment.

Sec. 2840. The owner or holder of stock in any firm or corporation, the capital or property whereof is assessed, must not be assessed individually for his stock in such firm or corporation.

Sec. 2041. The property of every firm and corporation, must be assessed in the county where the property is situated; and must be assessed in the name of the firm or corporation, unless otherwise provided by law.

Sec. 2842. The undistributed or unpartitioned property of deceased persons, may be assessed to the heirs, guardians, executors or administrators; and a payment of taxes made by either binds all the parties in interest for their equal proportions.

Sec. 2843. Ferries, toll bridges and toll roads must be assessed in county where the toll is collected.

Sec. 2844. All vessels of every class which are by law required to be registered, licensed or enrolled, must be assessed and the taxes thereon paid only in the county where the owner, or managing owner, or agent thereof, resides: *Provided*, That such interest shall be taxed but once. Vessels registered, licensed or enrolled out of, and plying in whole or in part in the waters of this territory, the owners, managing owners or agents of which reside in this territory, must be assessed in this territory and in the county in which the owners, managing owners or agents reside, to the value of the respective share or shares owned by said person or persons. All boats and small craft not required to be registered, must be assessed in the county where the same are kept.

Sec. 2845. Money and property in litigation, in possession of a county treasurer, of a county clerk, court or receiver must be assessed to such treasurer, clerk or receiver, and the taxes be paid thereon under the direction of the court.

Sec. 2846. Any property willfully concealed, removed, transferred or misrepresented by the owner or agent thereof to evade taxation, upon discovery, must be assessed at twice its value as a penalty for such concealment, removal, transfer or misrepresentation, and the assessment so made must not be reduced by the board of equalization.

Sec. 2847. Any property which has escaped assessment for the last preceding year, if such property is in the ownership or under the control of the same person who owned or controlled it for such preceding year, it shall be assessed for such preceding year, which shall be noted as a correction of the assessment of such preceding year.

Sec. 2848. Any person acting as the agent of another and having in his possession or under his control or management, any money, notes, and credits, or personal property belonging to such other person, with a view to investing or loaning, or in any other manner using the same for pecuniary profit, shall be required to list the same at the real value, and such agent shall be personally liable for the tax on the same; and if he refuse to render the list or swear to the same, the amount of such money, property, notes or credits shall be listed and valued by the assessor, according to his best knowledge and judgment, subject to the provisions of this act: *Provided*, That said property has not been listed for assesssment for the year in which the assessment is being taken.

Sec. 2849. All shares of banking associations organized within the territory pursuant to the provisions of the acts of Congress to procure national currency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof, held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate, in the assessment of taxes in the county where such banking association is located, and not elsewhere; whether the holder thereof resides there or not, but not at a greater rate than is assessed on other moneyed capital in the hands of individuals. The principal accounting officer of each banking association shall list the shares of the association as provided in this chapter, giving the assessor the name of each person owning shares, and the amount owned by each, and for the purpose of securing the collection of taxes assessed upon said shares, each banking association shall be liable to pay the same as the agent of each of its shareholders, under the provisions of this chapter; and the association shall retain so much of any dividend belonging to any shoreholder as shall be necessary to pay all taxes levied upon his shares.

Sec. 2850. Lands, lots and other real estate situate in the territory belonging to any railroad company or corporation not exclusively used in the operation of said railroad, shall be assessed and taxed on the same basis as the property of individuals, in the several counties where situated.

Sec. 2851. No real estate used by railway corporations for road-beds shall be included in the assessment to individuals of the adjacent property, but all such real estate shall be deemed to be the property of such companies for the purpose of taxation; nor shall real estate occupied or used as a public highway be assessed and taxed as part of adjacent lands from whence the same was taken for such public purpose.

Sec. 2852. The land occupied and claimed exclusively as the right of way for railroads, by railroad companies or corporations, with the track and all the sub-structures and super-structures which support the same, must be assessed as a whole, and as real estate, without separating the same into lands and improvements, at a certain sum per mile; and all such real estate situated in the territory and claimed by any railroad company as such right of way, shall be deemed to be the property of such company for the purpose of taxation.

Sec. 2853. The railroad improvements other than the track and the sub-structures and super-structures which support the same, whether situated upon the land occupied and claimed as the right of way, or on other lands, must be separately assessed as personal property.

Sec. 2854. The rolling stock of a railroad company or corporation, where the railroad is situated wholly in any county in the territory, must be assessed in the county where said railroad is situated; and where the railroad lies in several counties in the territory, its rolling stock must be apportioned between them, so that a portion thereof may be assessed in each county; and each county's portion must bear to the whole rolling stock the same ratio which the number of miles of the road in such county bears to the whole number of miles of such road lying in the territory; the officer listing such rolling stock must state specifically the number of freight cars, the number of baggage cars, the number of hand cars, the number of passenger cars, the number of engines, the number and name of all other rolling stock belonging to the respective road and the number of miles of said road in each county in which it is located; the assessor receiving said statement must make the apportionment between the several counties as herein provided, and forthwith send by mail to the assessor of each county entitled its respective apportionment, together with his estimated value, in the aggregate, of said rolling stock. The assessors receiving the apportionment and estimated value of the rolling stock, as provided in the preceding section, shall, if they think such estimate the full cash value of said stock, assess their respective apportionment pro rata, according to the number of miles of said railway in their respective county; but if any one or more of said assessors shall think said estimate either too high or too low, then such assessor shall assess his apportionment according to his best knowledge and judgment.

Sec. 2855. All other personal property belonging to railroad companies or corporations, and not heretofore designated, must be assessed in the county in which the same is found by the assessor or designated by the listing officers.

Sec. 2856. All water ditches constructed for mining, manufacturing or irrigation purposes, and wagon or turnpike toll roads with all improvements attached to such properties, must be listed and assessed as real improvements without separating the land and improvements, either in the description or valuation of the same, at a certain sum per mile, and all personal property not so attached must be listed and assessed as other similar personal property is listed and assessed.

SEC. 2857. All property, real and personal, including their franchises, owned by telegraph and express companies, and situated in the territory, must be listed and assessed for taxation and shall be subject to the same levies as the property of individuals and the same rules that govern other companies or corporations.

SEC. 2858. All lands occupied and used as the right of way for railroad beds, toll road beds and ditches, where said beds or ditches lie in two or more counties in the territory, are subject to the same listing and apportionment as is hereinbefore provided for the rolling stock of railroad companies.

☞ SEC. 2859. All lands known to contain mines, minerals, quarries, gypsum and natural timber of value, shall be assessed according to their full cash value, which shall include the value of said mines, minerals, quarries, gypsum and timber; and the assessor shall note on his assessment roll, immediately under the description of said lands, their nature, whether coal mines, gold mines, silver mines, copper mines or iron mines.

SEC. 2860. The assessor must assess all improvements on public lands as personal property, until the settler thereon has made "final proof;" if, however, in case of pre-emption claims, the entire purchase money has been paid by the pre-emptor, and a certificate issued therefor, the land itself must be assessed notwithstanding the patent has not issued.

SEC. 2861. Any person may deduct from his unsecured credits, all bona fide debts due and owing by him, whether on account, contract, note, mortgage or otherwise.

SEC. 2862. Whenever any person residing in any county of this territory, and owning any neat cattle, horses, mules, asses, sheep or goats thereon shall drive the same from the county where he resides into any other county for the purpose of temporarily pasturing the same during the grazing season, or the greater portion thereof, all such animals shall be assessed in the county where the owner resides; and such owner shall note on his statement of property, whether such stock, or any part thereof, has been moved to any other county for pasturage during the year for which such assessment is being made, or whether it is his intention to so move such stock, naming the county and the number and kind of stock so moved, or to be moved; the assessor must enter said note on his assessment roll immediately underneath the assessment of said person. The assessor of the county where the stock is found temporarily grazing, as provided for in the preceding section, must list the same with full description of each kind, and the number of the same; and for the purpose of making such list, he shall have power, and it is hereby made his duty to examine on oath the person or persons owning or having charge of such cattle, horses, mules, asses, sheep or goats, touching their number, ownership and from what county they were driven; and shall immediately send a certified copy of said list to the county treasurer of the county from whence said stock was driven and shall file the original list with the county auditor of his county. On the first Monday of May, or near after, in each year, the auditor of each county with whom has been filed the original list provided for in the preceding section, must make out a demand against the county from which the stock came, as shown in said list, for one-half of the tax assessed for county, school and road purposes against the property on said list, and must transmit the same to the county treasurer of the county from which said cattle came, and said treasurer must pay over to the auditor making such demand, one-half of all moneys which have been received by him on said assessment, less the costs of collection, taking the auditor's receipt therefor; the auditor receiving said money must immediately pay the same over to the treasurer of his county, and charge him with the amount so paid.

Sec. 2863. Every male inhabitant of this territory over twenty-one and under fifty years of age, must be assessed and annually pay a poll tax of two dollars, except paupers, idiotic and insane persons, and all active firemen, who have been a member of any fire company in this territory for the period of one year preceding the assessment of taxes.

Sec 2864. The assessor must, at the time of making his annual assessment, demand a poll tax from each person liable therefor, and if such person shall refuse or neglect to pay his poll taxes upon demand, by the assessor or his deputy, and such person is in the employ of another, the assessor must demand from the person, firm, corporation or company, or agent thereof, having said person in his or their employ, said poll taxes, and from thenceforth said person, firm, corporation or company shall be liable to the county for said poll taxes, which, if not paid on demand, must be added to the assessment of said person, firm, corporation or company or agent to retain from the wages of any person in his or their employ, the sum of two dollars for his poll tax.

Sec. 2865. Any person, firm, corporation or company becoming liable for the poll taxes of any person, as provided for in the preceding section, shall furnish such person with a statement to the effect that the amount of his poll tax has been deducted from his wages, and such statement shall be a sufficient receipt against the demand of any person for a poll tax from him for the year mentioned in said statement.

Sec. 2866. The county auditor of each county must furnish the assessor of his county annually, with blank poll tax receipts, for the respective year, numbered respectively and bearing the official seal of said auditor, which receipts shall have attached to them stubs, containing corresponding years, numbers and amounts, upon which stubs the assessor must enter the names of persons paying their poll taxes to him, and the assessor must return said stubs to the auditor at the time of his settlement.

Sec. 2867. The auditor must charge the assessor with two dollars for each blank poll tax receipt delivered to him, taking the assessor's receipt for the same, and must allow the assessor two dollars for each of said poll tax receipts returned to him in blank.

Sec. 2868. Each assessor shall be allowed five per cent. on all moneys collected by him from polls, and he may retain said amount out of the money so collected.

Sec. 2869. On or before the first Monday in July and in the first district, and in the second district on or before the first Monday of May in each year, the assessor must pay to the county treasurer of his county, all money collected by him for poll tax, less the five per cent. allowed him for collection, taking the treasurer's duplicate receipt therefor, which duplicate receipt he must file with the county auditor, who must credit the assessor with the amount shown by said receipt to have been paid, and charge the treasurer with said amount. The auditor must then settle with the assessor allowing him credit for all poll tax money paid to the treasurer as shown by said duplicate receipt, for the five per cent. allowed him on collections, and two dollars each for all blank poll tax receipts returned, and must deliver up to the assessor his receipts for said blanks: *Provided*, A sufficient number of said blanks is returned to balance his account; otherwise, said receipts must be retained by the auditor, until said account is properly balanced, and it shall be unlawful for any board of county commissioners to pay the assessor of its respective county for assessing the same until said assessor shall have first settled his poll tax account with the county auditor.

Sec. 2870. All poll tax money callected must be paid into the county fund: *Provided*, That the county commissioners may appropriate a sufficient amount thereof to pay the incidental expenses of the county.

Sec. 2871. The county assessor must return on his assessment roll all uncollected poll taxes in the name of the person, firm, corporation or company liable to pay the same. He must also return a list of persons who have paid their poll tax.

Sec. 2872. The county assessor of each county must complete his assessment roll on or before the first Monday of May in each year, and file the same with the county auditor, together with his "detail lists," alphabetically arranged, and must take and subscribe an affidavit in said roll before the county auditor or his deputy, substantially as follows, to-wit:

Territory of Washington, } ss.
County of ——— }

I, —, county assessor for said county, do swear, if in the first district between the first Monday of April and the first Monday of July, in the second district that between the first Monday of February and the first Monday of May, eighteen hundred and —, I have made diligent inquiry and examination to ascertain the names of all persons liable to taxation in said county, and all the property within said county, subject to taxation, and that I have entered said names on this assessment roll, and have assessed said property equally and uniformly, according to the best of my judgment, information and belief, at its full cash value; that I have faithfully complied with all the duties imposed on the assessor under the revenue laws of said territory, to the best of my ability; that I have not imposed any unjust assessment through malice or ill will, nor allowed any one to escape a just and equal assessment, through favor or reward, and that the foregoing on pages — to — inclusive, contains said names and assessment, as required by law. (Signed) ————————.

County assessor for———, W. T.

Subscribed and sworn to before me this — of —, 18—.

————————, County auditor.

## CHAPTER CCXXII.

### EQUALIZATION OF TAXES.

Section
2873. County commissioners, boards of equalization.
2874. Auditor clerk of board; duties of.
2875. Proceedings of board, how attested.
2876. Assessor shall attend, privileges of.

Section
2877. Powers defined: no assessment raised without notice to affected party.
2878. Omissions by assessor, to be supplied.
2879. Parties complaining of assessments.

Sec. 2873. The board of county commissioners of each county shall constitute a board for the equalization of taxes for its respective county, and shall annually hold a session for the equalization of assessments and the correction of the assessment roll, which term shall commence in the first district on the first Monday of the regular August term, in the second district on the first Monday of the regular May term of each year, and continue until such business is completed: *Provided*, That said term shall not exceed two weeks in one county for this purpose.

Sec. 2874. The county auditor or his deputy, shall act as clerk of the board of equalization, and must record in a book to be kept expressly for the purpose, all changes, corrections, additions to, or deductions from the assessment roll, and all alterations of the valuation of property made by the assessor, and must note down and preserve in said book, substantially, the evidence upon which such addition, deduction or alteration was based, together with all orders made by the board touching said assessment roll, and during the session of the board, or as soon as possible after its adjournment, must enter upon the assessment roll all changes and corrections made by the board, and attach his certificate thereto, subscribed by him and attested by his official seal, as follows:

I —, do hereby certify that, as clerk of the board for the equalization of taxes for the county of —, I have kept correct minutes of all the acts of the board, touching alterations in the assessment roll for year 18—; that all alterations agreed to or directed to be made by the board have been made and entered in said roll, and that no changes or alterations have been made therein except those authorized by the board.

In testimony whereof, I have hereunto set my hand and official seal this —, day of — 18—. (Signed) ———————,

[Seal.] Clerk of the board for the equalization of taxes.

Sec. 2875. The records of the proceedings of the board for the equalization of taxes must be signed by the chairman thereof, and attested by the clerk, with the seal of the board of county commissioners thereto affixed.

Sec. 2876. The county assessor, and when required by the board, his deputy or deputies, shall attend the sessions of the board and answer all question put to them or either of them touching the assessment roll, the valuation of property and any other matter appertaining thereto, and may make any statement, or introduce and examine witnesses or questions before the board.

Sec. 2877. The board for the equalization of taxes shall, at its session, examine the assessment roll of the county, filed for that year, and shall have power to correct the same by directing the clerk of the board to make alterations in the description of lands, or other property listed upon such roll when it shall be necessary to make such description conformable to the requirements of law, and may direct the clerk to make any other alterations in such roll that it may deem necessary to make the same conform to the requirements of law. The board shall, at said session, hear and determine all matters concerning assessments, and may subpœna such witnesses, hear and take such evidence in relation to the subject matter pending, as in its discretion it may deem proper, and shall raise or reduce, as the case may require, all appraisements of property found to be below or above the average valuation of property of the same or similar kind as made by the assessor, so as to make taxation equal and uniform, and direct the clerk to enter such raise or reduction upon the assessment roll: *Provided*, That in the equalization of assessments the board shall be governed by the value of the property on the first Monday of April in the first district, and the first Monday in February in the second district in said year: *And*, *provided also*, That no assessment shall be raised unless two days' notice in writing be first given to the party affected.

SEC. 2878. The board must also direct the clerk to place upon and add to the assessment roll any property, real or personal, subject to taxation, which it may discover to have been omitted by the assessor, and must assess the same to a just and uniform value, as compared with the average valuation of property of the same or similar kind as made by the assessor.

SEC. 2879. During the session of the board for the equalization of taxes and the correction of the assessment roll, any person or his attorney or agent may attend and apply for the correction of any alleged error in the listing and valuation of his property, and a failure to so attend and apply shall bar said person from further recourse in law, as to the valuation, but not as to error in description or to double assessment.

## CHAPTER CCXXIII.

### LEVY OF TAXES.

SECTION
2880. Commissioners at May term to determine amount.
SECTION
2881 For territorial, county, school road and bridge.
2882. Lien of taxes upon property.

SEC. 2880. The board of county commissioners of each county must, at its May session in each year, estimate and determine the amount of money to be raised in its county for territorial, [county,] school and road purposes respectively, for the year, and such determination must be entered at large in its records.

SEC. 2881. The board of county commissioners in each county shall, annually, at their May term, levy the following taxes upon the assessed value of the taxable property in the county: (1.) For territorial revenue, two and one-half mills. (2.) For ordinary county revenue, not to exceed eight mills. (3.) For support of schools, not to exceed six mills. (4.) For roads, not to exceed five mills. For roads and bridges, the county commissioners may levy not to exceed two mills, to be collected in cash: *Provided*, That in the county of Lewis said tax shall be applied to the building and repairing of bridges, only.

SEC. 2882. Every tax has the effect of a judgment against the person; and every lien created by this act has the force and effect of an execution duly levied against all property of the person assessed; the judgment is not satisfied nor the lien removed until the taxes are paid. Every tax due upon personal property is a lien upon the real property of the owner thereof. Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and improvements. The personal property not exempt from taxation of any person owing a tax or taxes in any county in this territory, is liable for said tax or taxes, whether it be the same property assessed for said tax or not, and may be sold according to law, to pay said tax.

# CHAPTER CCXXIV.

## DUTIES OF COUNTY AUDITOR IN RELATION TO ASSESSMENT AND LEVY OF TAXES.

SECTION
2883. Assessment roll for treasurer, what shall contain.
2884. Copy of assessment roll and certificate; to furnish territorial auditor a statement; duties of territorial auditor.
2885. Auditor to attest with seal.
2886. Assessments open to public inspection.
SECTION
2887. Duplicate assessment roll for treasurer.
2888. Treasurer to receipt for roll and charged with amount.
2889. Of supplemental assessments by treasurer.
2890. Suplemental assessment to be transmitted to territorial treasurer.
2891. Sheriff charged with delinquent; penalty.

SEC. 2883. The county auditor, as soon as he has corrected the assessment roll, as directed by the board for the equalization of taxes, and after the tax levy is made by the board, must enter in a separate column in said roll the aggregate sum in dollars and cents, rejecting the fractions of a cent, of each person's tax to be paid on the property therein enumerated, and the total tax of each person, firm, corporation or company assessed, and must add up and enter the footings of the columns of acres, and valuations on each page, and extend the respective footings to the page or pages immediately following his certificate, and add up and enter the sum total of such footings, and must at the time he delivers the duplicate assessment roll to the treasurer, furnish said treasurer with a certified statement of the respective tax levies made by the board as provided in this chapter.

SEC. 2884. The auditor must make a copy of the assessment roll and enter upon said copy, immediately following the extended footings, his certificate as follows, to-wit:

I —, auditor of the county of —, do hereby certify that I received the assessment roll of the taxable property of said county, for the year 18—, from the county assessor, of said county, on the — day of —, 18—, with his affidavit thereto affixed; that I have entered upon said roll all corrections directed by the board of equalization at its session for the equalization of taxes to be entered upon said roll; that I have reckoned the respective sums due as taxes on said roll, and have added up the columns of valuations, taxes and acreage as required by law, and that the "duplicate roll," to which this certificate is affixed, is a full, true and correct copy thereof, made in the manner prescribed by law.

In testimony whereof, I hereunto set my hand and official seal of office, this — day of —, 18—. (Signed) ——,
Auditor of —— county, W. T.

SEC. 2885. The county auditor must on or before the first Monday of September in each year prepare from the assessment roll of such year as corrected by the direction of the board of equalization, a statement showing: (1.) The total value of all property assessed. (2.) The value of all real estate assessed. (3.) The value of the improvements thereon. (4.) The value of all personal property. (5.) The number of acres of land. The auditor must, as soon as such statement is prepared, transmit under seal the same by mail or express to the territorial auditor. The territorial auditor must charge each county with the amount of territorial tax due from each county respectively at the rate of two and one-half mills on the dollar for the total amount of taxable property in the county as shown by the auditor's statement of property listed and the total value thereof. The auditor must attest under his hand and seal of office all statements made by him under the provisions of this chapter.

SEC. 2886. The original assessment roll and detail lists must remain in the office of the county auditor, subject to the inspection of any person during office hours, except during the necessary time the detailed lists may be in the hands of the binder for binding.

SEC. 2887. On or before the first Monday of October in each year the auditor must deliver to the county treasurer the copy of the assessment roll, to be styled and designated the "duplicate assessment roll of the county of —, W. T., for the year 18—," with his, the said auditor's, warrant thereto affixed, in the following words:

TERRITORY OF WASHINGTON, } ss
County of ——, }

The United States of America to —, county treasurer for — county, W. T., Greeting: In the name of the United States you are hereby commanded to collect the taxes charged in this duplicate assessment roll of said county for the year 18—, as required by law.

Witness my hand and official seal of office this — day of —, 18—.

————, County auditor for ——, W. T.

SEC. 2888. The county treasurer must receipt to the auditor for the duplicate assessment roll on delivery thereof, which receipt must show the full amount of taxes levied, and the auditor must charge the treasurer with said amount, and file and carefully preserve said receipt. If the duplicate assessment roll or delinquent tax list is transferred from one treasurer to another, or to the sheriff, the auditor must credit the one and charge the other with the amount then due on said roll.

SEC. 2889. At the time the treasurer and auditor compare the original and duplicate assessment rolls, the auditor must enter upon the original roll all supplemental assessments made by the treasurer, and charge the treasurer with the amount of taxes thereof, and at the time of settlement with the treasurer, by the board of county commissioners, the auditor must enter the balance of such supplemental assessments and charge the treasurer with the amount of such balance.

SEC. 2890. The auditor of each county must immediately after the annual settlement by the board of county commissioners with the county treasurer, transmit to the territorial auditor a statement of the treasurer's supplemental assessment.

SEC. 2891. At the time the auditor and sheriff compare the original and duplicate assessment rolls, the auditor must charge the sheriff with the amount of penalty added to the delinquent taxes.

## CHAPTER CCXXV.

### COLLECTION OF TAXES.

SECTION
2892. County treasurer, collector.
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2895. Notice must be published.
2896. Demand for taxes not necessary.
2897. Treasurer to attend at office to collect.
2898. Treasurer must note date of payment.
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2901. When taxes shall become delinquent.
2902. Treasurer to return his proceedings, when.
2903. Sheriff forthwith to collect delinquent taxes by distraint.
2904. Sheriff entitled to mileage.
2905. Distrained property kept at expense of owner.
SECTION
2906. Sale of distrained property.
2907. Unsold property at expense of owner.
2908. Personal property sold before realty advertised.
2909. Correction of errors or double assessments.
2910. Sheriff may summon assistance; penalty for refusing to aid sheriff.
2911. Delinquents must pay penalty, interest, etc.
2912. Proceedings against parties removing property before paying tax.
2913. Error in name may be corrected.
2914. Supplementing omissions of previous year's assessments.
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Section
2918. Proceedings at sale.
2919. Property struck off to county.
2920. Sale to person who will take portion; how marked off.
2921. When land must be re-sold.
2922. Person refusing to pay cannot again purchase.
2923. Lands must not be sold again, except.
2924. Return of sales by sheriff.
2925. Sheriff to give certificate; what to contain.
2926. When sheriff must return proceedings to auditor; duties of latter.
2927. List of advertised lands attached to duplicate assessment roll.
2928. Purchaser at tax sale acquires.
2929. Certificate of purchaser assignable.
2930. Redemption of lands, lots, etc., sold to actual purchasers.
2931. Redemption of lands, lots, etc., sold to county.
2932. Sale stopped by payment of taxes, etc.
2933. Of sales heretofore sold to county.

Sec. 2892. The county treasurer of each county in the territory shall be the collector of taxes for his respective county, except as herein provided for the collection of poll and road taxes.

Sec. 2893. The duplicate assessment roll, with the warrant of the county auditor thereto affixed, shall be full and sufficient authority for the county treasurer to collect the taxes therein levied.

Sec. 2894. The county treasurer, within ten days after the receipt of the "duplicate assessment roll," must publish an official notice specifying: (1.) That the "duplicate assessment roll," of the county for the year 18—, is now in his possession for collection of the taxes levied therein. (2.) That taxes will be delinquent on the 31st day of December, next thereafter, at 6 o'clock P. M., and that unless paid prior thereto, ten per cent. will be added to the amount thereof as penalty, and interest charged at the rate of twenty per cent. per annum from date of delinquency until paid. (3.) The time and place at which payment of taxes may be paid.

Sec. 2895. The notice must be published four consecutive weeks, in the weekly newspaper published in the county, or in some newspaper published in the territory, of general circulation in the county; or if there be no paper published in said county, it shall be the duty of the treasurer to post written notices in at least three public places in said county.

Sec. 2896. No demand for taxes shall be necessary, but it shall be the duty of every person subject to taxation under this act, to attend in person, or by agent or attorney at the office of the county treasurer and pay his taxes before the same become delinquent.

Sec. 2897. The county treasurer of each county, or his deputy, must attend at the county seat at all times during office hours, to receive the taxes not yet paid, and he is also required to receive and collect as far as practicable the taxes remaining unpaid on the delinquent list of any former year or years.

Sec. 2898. The treasurer must note opposite of the tax paid, and in the column prepared for that purpose, the date of the payment of said tax.

Sec. 2899. The treasurer must give a receipt to the person paying any tax, specifying the amount of the assessment, amount paid, date of payment, year for which the tax was assessed, to whom assessed, county assessed in, by whom paid, and, if required, a description of the property assessed.

Sec. 2900. The probate judge must require every administrator and executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid.

Sec. 2901. On the thirty-first day of December in each year, at six o'clock P. M., all unpaid taxes are delinquent, and thereafter the sheriff must collect thereon, at the same time and in the same manner, that the tax is collected, ten per cent. additional, as penalty, and interest at the rate of ten per cent. per annum from said date until paid.

SEC. 2902. On the first Tuesday in January in each year, the treasurer of each county must attend at the office of the county auditor with the duplicate assessment roll, and every item marked "paid" in such duplicate assessment roll must be marked "paid" in the "original assessment roll," with the date of payment of each; and every item marked "error" or "double assessment" in the duplicate must be marked the same in the original: *Provided*, The auditor shall be satisfied that the same are "errors" or "double assessments;" and the delinquent taxes must then be extended on each roll in the columns prepared for the same, with the ten per cent. penalty added, and the footings of the delinquent taxes in the original and duplicate rolls must agree: *Provided*, That the treasurer shall not be the collector of taxes, after the first day of January of each year, but shall, after he has made his comparison with the auditor, turn over the duplicate assessment roll to the sheriff of the county, who shall collect the delinquent taxes, as in this act provided, and the auditor shall charge the sheriff with the amount of delinquent taxes turned over to him, and shall credit the treasurer with the same amount; and the sheriff shall have the ten per cent. penalty for the collection of all the delinquent taxes.

SEC. 2903. Immediately after taxes have become delinquent in each year, and the footings are made as required in the preceding section, the sheriff must proceed to collect the same by distraint and sale of the personal property of the persons whose taxes are delinquent on his list: *Provided*, That nothing herein contained shall be so construed as to exempt any property from sale for the payment of taxes.

SEC. 2904. When the sheriff distrains personal property for taxes he may collect mileage at the rate of ten cents per mile for each mile necessarily traveled in going to and returning from the place of sale, and the amount so collected must be entered on the duplicate roll in the column of "mileage."

SEC. 2905. When the sheriff distrains personal property for taxes he may keep it at the expense of the owner until the sale thereof unless the tax, penalty, interest due and all costs and expenses be sooner paid.

SEC. 2906. As soon as the sheriff distrains personal property for taxes he must give notice of the time and place of sale of the property distrained by posting written or printed notices thereof, in three public places in the county, one of which shall be at the place of sale; the time to be stated in the notice shall not be less than three nor more than ten days from the day of seizure, but he may adjourn the sale from day to day, for a period not exceeding three days, and shall adjourn at least once when there are no bidders; and in case of an adjournment for want of bidders, he must post a notice thereof at the place of sale. The sheriff must sell the least amount of the personal property distrained or the smallest interest in the same, that any person will take and pay all of the taxes against the person whose property is distrained, whether in real or personal property, or both, including the penalties, interest and all expenses and costs of sale. The sheriff must, if required, give a bill of sale in the name of the county in which the tax was levied, of the property or interest purchased to the purchaser, and such bill of sale shall be valid against all other claims.

SEC. 2907. Unsold property may be left at the place of sale at the expense of the owner.

SEC. 2908. The sheriff must sell sufficient of the personal property of a person whose taxes are delinquent to satisfy said taxes and accrued penalties, interest, and costs before he advertises the real property of said person for his taxes, and he must use due diligence and search to find said personal property.

SEC. 2909. When the treasurer or sheriff discovers an error or double assessment in the duplicate assessment roll, he must note the same in ink opposite the "error" or "double assessment" in the column under "remarks," and if a "double assessment," refer to the name or line and page where said assessment is correctly listed.

SEC. 2910. If the sheriff or his deputy be impeded or resisted in the execution of any of the duties of his office, he may require any suitable person or persons to aid him therein, and if any such person refuse to aid the sheriff, or his deputy, when so required to do by either, he or they shall each forfeit and pay the sum of twenty dollars, to be recovered by civil action in any court having jurisdiction of the case; the action to be prosecuted by the county as plaintiff; the amount recovered to be for the use of the common school fund, and the person or persons resisting shall be liable as in case of resisting the sheriff in the execution of civil process.

SEC. 2911. The sheriff shall continue to receive payment for taxes after the same have become delinquent, but he must require all delinquents to pay the penalty, interest and costs as provided in this chapter.

SEC. 2912. Whenever the treasurer or sheriff shall discover that any person is disposing of or removing from the county any personal property on which a tax has been assessed and not paid, and no real estate is held for said tax, it shall be the duty of such officers to immediately proceed to collect the taxes due from the owner thereof, whether the same are delinquent or not, by levying upon and making sale of such personal property in the manner herein provided for the collection of delinquent taxes.

SEC. 2913. If during the collection of taxes the treasurer or sheriff or his deputy shall discover that an error has been made in entering the initials or name of any person, or in the description of his property on the duplicate assessment roll, he may correct such error so that the tax may be collected from the person intended, and the description of property correspond with the property owned by the person taxed.

SEC. 2914. Whenever the treasurer or sheriff discovers that any land or other taxable property has been omitted from the last assessment roll, in his hands, he must list the same on said roll, under the head of "treasurer's or sheriff's supplemental assessment for the year (naming it)," estimate the tax thereon according to the last levy, by the board of county commissioners, and collect said taxes the same as other taxes are collected.

SEC. 2915. On the first Monday in April of each year, the sheriff or his deputy must enter in the "duplicate assessment roll" immediately following his supplemental assessment, the following affidavit and subscribe to the same before the county auditor or his deputy, to-wit:

TERRITORY OF WASHINGTON, }
County of——. } ss.

I, — , sheriff (or deputy, as the case may be) do solemnly swear or affirm that I have made due and diligent search to find sufficient personal property, subject to levy, belonging to and owned by each person whose tax is now delinquent, on this "duplicate assessment roll," and that I have been unable to find any such property from which to make said tax, so help me God. ————

Subscribed and sworn to before me this —day of —, 18—.

————, Auditor for — county, W. T.

SEC. 2916. On the first Monday of May in each year, at 10 o'clock A. M., at the county seat of each county, the sheriff thereof, or his deputy, must commence the sale, at public auction, of real estate upon which taxes have been levied and not paid. The sale of real estate for delinquent taxes may be at the office of the sheriff, or at the court house of the county, as the sheriff may elect, by notice duly given at the time of publication of the delinquent list.

SEC. 2917. The sheriff must give notice of the sale of real property for taxes by publishing for three consecutive weeks the delinquent list, with total amount of taxes, including penalty, interest and costs to date of sale, in the weekly newspaper published in the county or supplement thereto, if there be one; or if there be two or more newspapers published in said county, then in the official paper published in said county or supplement thereto; or if there be no paper published in the county, then in some newspaper published in the territory and having a general circulation in the county, for which said printing is done, or the sheriff of such county may give said notice by posting printed or written notices, in at least six of the most public places in the county, for three consecutive weeks, prior to the first day of sale. Said notices must contain a notification that all real estate upon which the taxes for the preceding year, (naming it) have not been paid, will be sold at public auction, or a sufficient portion thereof, to satisfy all taxes, penalties, interest and costs due to the county from the owners thereof for said year; the time and place of such sale; a description of all lands, city and town lots to be sold, and the names of the persons to whom the same are assessed, or to "owners unknown," as the case may be.

SEC. 2918. On the day fixed for sale, and on each subsequent day adjourned to, the sheriff, between the hours of 10 o'clock A. M., and 3 o'clock P. M., must offer for sale the property advertised, (unless all taxes, penalty, interest and costs against any specific tract thereof have been previously paid), commencing at the head of the list and continuing alphabetically with the names of the persons whose taxes are delinquent, and must sell to the persons who will take the least quantity of land offered, or in case an individual interest is assessed, then the smallest portion of the interest, and pay all the taxes, penalty, interest and costs.

SEC. 2919. The land assessed to each person, corporation or company whose taxes are delinquent on said advertised list, must be twice offered for sale, if not sold on the first offer, and if there be no bidder for any parcel or lot, of a sum sufficient to pay all taxes, penalty, interest and costs, including cost of advertising, that the sheriff is required to collect by sale of such parcel or lot of land, the same shall be struck off to the county for the whole amount of such taxes, penalty, interest and costs.

Sec. 2920. When a person offers to take a less quantity than the whole tract, lot or parcel of land offered for sale by the sheriff for delinquent taxes, he must not make his selection from or near the center of any division or subdivision assessed, but must start from one of the descriptive points of said tract or lot and run his lines so that they will not divide any building situated on said land.

Sec. 2921. If the purchaser does not pay the taxes and costs before 10 o'clock A. M. of the following day, the property must then be re-sold, or, if the tax sale is closed, entered as "sold to county."

Sec. 2922. The bid of any person refusing to make the payment for property purchased by him, must not again be received on the sale of any property advertised in the delinquent list of that year.

Sec. 2923. Lands or lots once advertised and sold for taxes must not be advertised and sold again for the same taxes unless by order of the board of county commissioners, but must remain charged to the sheriff and may be redeemed by any person by paying to said sheriff all taxes, penalty, interest and costs charged against such lands or lots.

Sec. 2924. Whenever the sheriff sells any property for taxes he must enter in the appropriate columns on the duplicate assessment roll, the amount of interest and costs, date of sale, to whom sold; or, if to the county, "sold to county."

Sec. 2925. After receiving the amount of the taxes and costs and one dollar for the certificate, the sheriff must give to the purchaser a certificate of sale, dated on the day of sale, describing the land so purchased, stating that it was sold for taxes, the date of sale, the amount paid therefor, and, when known, the name of the person assessed for said taxes. The certificate must be signed by the sheriff in his official capacity, and shall be *prima facie* evidence of the regularity of all prior proceedings.

Sec. 2926. Within ten days after the annual sale of lands for taxes, the sheriff must attend with the duplicate assessment roll at the office of the county auditor, and the auditor must enter in the original assessment roll all entries made by the sheriff (including affidavits), since the last day of comparison, and must at the same time charge the sheriff with the amount of advertising as shown by the entries in the duplicate roll, with the amount of interest collected to date.

Sec. 2927. The sheriff must attach to the duplicate assessment roll in an appropriate place, a printed list of the lands advertised for the year in which the taxes on said roll were listed, and must furnish the auditor with a printed list of said lands, and the auditor must attach the same to the original roll.

Sec. 2928. The purchaser acquires a lien on the land or lot sold for taxes, for the amount paid by him at the sale, and if he subsequently pay any tax levied upon the same, whether for any year or years previous or subsequent to the sale, he shall have the same lien for the taxes so paid, and he shall be entitled to interest on the amount of taxes paid by him, at the rate of twenty per cent. per annum from date of payment.

Sec. 2929. The certificate of purchase of any land or lot sold for taxes assessed thereon, may be assigned by the purchaser, his heirs, executors or administrators, to any other person.

Sec. 2930. All lands, city and town lots sold to actual purchasers, shall be subject to redemption by the former owner thereof within three years thereafter, on the payment of the delinquent taxes with twenty per cent. per annum interest, costs, charges and the accruing tax, to the purchaser, who shall receipt therefor, or to the county treasurer for the use of such purchaser, and if no receipt of such purchaser shall be filed with such treasurer, or no such payment be made to him, the holder of the certificate of purchase shall be entitled to receive a deed.

SEC. 2931. Lands, and city and town lots sold to the county may be redeemed by the former owner thereof by such owner obtaining from the county auditor a certified statement of the amount of all taxes, interest, costs and accrued taxes charged to such land or lots, and paying such amount to the county treasurer, who shall give him a receipt therefor, and the county auditor, on filing such receipt, shall give to such owner a certificate of redemption of such land, city or town lots, signed by him in his official capacity, and sealed with the seal of the board of county commissioners, and shall charge such treasurer with the amount of such receipt, and shall omit such land, city or town lots, so redeemed, from his list of county lands.

SEC. 2932. The owner, or his agent, of any lands, city or town lots advertised for sale for delinquent taxes thereon, may, before the sale thereof, pay all taxes, interest, penalty and costs due from the owner thereof, and stop the sale.

SEC. 2933. Land heretofore sold to county for taxes must not be advertised again for sale for the same taxes unless by order of the board of county commissioners, duly entered of record, and when so advertised and sold, the entries, taxes, penalties, interest, costs and all transactions relating to the same must be kept and held separate and distinct from the taxes levied on said lands and the collections of the same under this act.

## CHAPTER CCXXVI.

### CONVEYANCE OF REAL ESTATE SOLD FOR TAXES.

SECTION
2934. Holder of certificate for three years, entitled to deed.
2935. Fee of sheriff for tax deed.
2936. Recitals in tax deeds
2937. Tax deed, evidence of regularity of proceedings.

SECTION
2938. What a tax deed conveys.
2939. Time within which suits for recovery of lands sold for taxes.
2940. Of what certified rolls, etc., are *prima facie* evidence.

SEC. 2934. If, within three years after the sale of any tract or lot of land for taxes, the same has been not redeemed, as provided, the lawful holder of a valid certificate of sale shall be entitled to a deed to the land described in said certificate, and upon the surrender of said certificate to the sheriff, and the payment of all subsequent taxes against said land, if there be any, and the redemption of said lands from all former sales to the county, not yet redeemed, if there be any, the sheriff must make to the purchaser or his assignee, a deed of the property in fee simple, running in the name of the territory of Washington, and reciting in the deed substantially the matters contained in the certificate, and that no person has redeemed the property during the time allowed by law for its redemption.

SEC. 2935. The sheriff shall be entitled to collect, from the person receiving a tax deed, an additional sum of three dollars for executing said deed.

SEC. 2936. The matter recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved is *prima facie* evidence that: (1.) The property was assessed as required by law; (2.) The property was equalized as required by law; (3.) The taxes were levied as required by law; (4.) The taxes were not paid; (5.) At a proper time and place the property was sold as prescribed by law, and by the proper officer; (6.) The property was not redeemed; (7.) The person who executed the deed was the proper officer.

SEC. 2937. Such tax deed, duly acknowledged or proven, is (except as against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment by the assessor, inclusive, up to the execution of the deed.

SEC. 2938. A tax deed, executed under this act, conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except when the land is owned by the United States or this territory, in which case it is *prima facie* evidence of the right of possession.

SEC. 2939. Any suit or proceeding for the recovery of lands sold for taxes, except in cases when the taxes have been paid on the land redeemed, as provided by law, shall be commenced within three years from the time of recording the tax deed of sale, and not thereafter, except by the purchaser at the tax sale.

SEC. 2940. The assessment roll and the duplicate assessment roll, or a copy thereof, certified by the county auditor, or county treasurer or sheriff, showing unpaid taxes against any person or property are *prima facie* evidence of the assessment, the property assessed, the delinquency, the amount of taxes, penalty, interest and costs due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

## CHAPTER CCXXVII.

### ACCOUNTS AND SETTLEMENTS.

SECTION
2941. Fiscal year defined.
2942. When county treasurer to forward territorial fund.
2943. Compensation of county treasurer.
2944. Territorial treasurer to give duplicate receipts.
2945 Territorial auditor to furnish blanks.

SECTION
2946. Assessment rolls; requisites of.
2947. Annual settlement of county treasurer.
2948. Annual settlement with sheriff for delinquent taxes.
2949. Uncollected taxes remain charged to sheriff.
2950. Of collection of interest by sheriff.

SEC. 2941. The fiscal year shall commence the first day of May and end on the (first) [last] day of April in each year.

SEC. 2942. The county treasurer of each county in this territory must, on the first Monday in each month pay into the territorial treasury, or forward to the territorial treasurer, in such manner as he shall direct, at the expense of the territory, all territorial taxes by him collected, less four per cent. commission.

SEC. 2943. The county treasurer of each county shall be allowed to retain two per cent. upon all moneys collected by him, and two per cent. upon all moneys paid out by him, as fees for collecting and disbursing the same, except in counties where treasurers thereof receive a salary in lieu of commissions as their compensation: *Provided*, That in counties where the treasurers receive a salary in lieu of commissions, the four per cent. commission withheld from the territorial fund shall be placed in the county fund.

Sec. 2944. The territorial treasurer must give or send a receipt to the county treasurer entitled thereto for the amount of each payment into the territorial treasury, on receipt of the same. and must, at the same time, deliver a duplicate of every such receipt to the territorial auditor, who must file and preserve the same.

Sec. 2945. The territorial auditor must, on or before the first day of April of each year, furnish, at the expense of the territory, to the auditor of each county, one "assessment roll" and a "duplicate assessment roll," and on or before the first day of February in each year, a sufficient number of "detail lists," of real and personal property, for the use of the assessor and tax payers, with appropriate headings and columns sufficient to correspond with the requirements of law.

Sec. 2946. The assessment rolls and duplicate assessment rolls provided for in the preceding section, must each be backed and headed by printed dates and name of the county, for the respective year, and county for which they are intended.

Sec. 2947. Each county treasurer must attend with his books and vouchers before the board of county commissioners of his county at its May session in each year, and settle his accounts before said board; and in such settlement the board must allow the treasurer the following credits: (1.) The amount of principal and interest paid on county and road orders, subsequent to the last preceding settlement whether such orders have been fully paid or but partially paid. (2.) Amount paid territorial treasurer during the preceding fiscal year, as per voucher. (3.) Amount paid school districts during the preceding fiscal year. (4.) Amount paid road supervisors during the preceding fiscal year. (5.) Amount allowed by law, for his compensation, and such other credits as he is entitled by law to receive.

Sec. 2948. The sheriff, as tax collector, shall attend at the May term of the board of county commissioners, with his books and vouchers, and shall be allowed the following credits in his annual settlement: (1.) All moneys paid by him to the county treasurer for the preceding fiscal year, as per voucher. (2.) Amount of errors and double assessments proven to exist in the duplicate assessment roll. (3.) The ten per cent. penalty collected on delinquent taxes up to date of sale of real estate, and such other credits as he is entitled by law to receive.

Sec. 2949. The amount of uncollected taxes on personal property or polls, and the amount of taxes on "lands sold to the county," must remain charged to the sheriff, who must collect the taxes, costs and interest due on the same by distraint and sale of personal property as herein provided, whenever he can find personal property belonging to the person assessed and whose taxes are delinquent, out of which to make said taxes, costs and interest, unless the same be sooner paid.

Sec. 2950. The sheriff must enter, in the interest column in the duplicate assessment roll, the amount of interest collected from each person; and the auditor must, on each date of comparison of the original and duplicate rolls, charge the sheriff with the aggregate amount of interest collected by said sheriff since the last date of comparison.

# CHAPTER CCXXVIII.

## MISCELLANEOUS PROVISIONS.

SECTION
2951. Abbreviations and figures may be used in assessments, etc.
2952. Assessments, etc., not invalid because of informality.
2953. Fines and penalties go to school fund.
2954. Interest payable to county fund.
2955. Of the publication of notices, etc.
2956. Rate fixed for publication.
2957. County shall not make up deficiency in other funds.
2958. Person must be assessed for property owned, when.
2959. Assessor to arrange detail lists in alphabetical order.
2960. Commissioners may order lists bound.

SECTION
2961. Taxes paid in lawful money.
2962. Compensation of assessor.
2963. Deputy assessors and compensation.
2964. Compensation to auditor, treasurer and sheriff; sheriff to give bond as collector of delinquent taxes.
2965. Sheriff, assessor and treasurer liable for deputies.
2966. After annual settlement, must charge sheriff with interest collected.
2967. County treasurer must keep account with each fund, and publish annual statement.
2968. Of collection of taxes heretofore assessed.
2969. Certificate to tax levy transmitted to territorial auditor.

SEC. 2951. In the assessment of land, advertisements and sale thereof for taxes, initial letters, abbreviations and figures may be used to designate the township, range, section or part of sections.

SEC. 2952. No assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law, and no such act shall affect the validity of any taxes, sales or other proceedings for the collection of taxes under revenue law, or the validity of a tax deed made pursuant to said law.

SEC. 2953. The fines and penalties collected under revenue law, for a violation of its provisions, must be paid into the county treasury for the use of the general school fund.

SEC. 2954. All interest and cost of advertising hereafter collected under this and former acts must be paid into the county treasury for the use and benefit of the county fund.

SEC. 2955. All advertisements and notices provided for in revenue law, which are required to be published, including delinquent tax lists, must be published for three consecutive weeks in the weekly newspaper published in the county, or supplement thereto, or in some newspaper published in the territory and of general circulation, if there be one; if more than one, then in the official paper published in the county; or if there be none, then in a weekly paper published in the territory, and having the largest circulation in the county for which said publishing is done. In counties where there is no paper published, the board of county commissioners of said county must designate some newspaper published in the territory and having general circulation in said county in which the official printing for the county must be done, and for this purpose it must solicit bids to do said printing; or may order written notices to be posted up in several precincts of said county. If not published in a newspaper the said notices must be posted in at least six of the most public places in the county for three weeks.

SEC. 2956. The publisher shall be paid for publishing the notices and delinquent tax lists, required to be published, at the rate not to exceed seventy-five cents for each separate description of real estate, for the first insertion, and not to exceed twenty-five cents for each subsequent insertion, or at the rate not to exceed one dollar per square of twelve lines nonpareil, where said notice or description equals or exceeds said twelve lines for the first insertion and not to exceed the sum of twenty-five cents for each subsequent insertion thereof. Said payment to be made by order of the board of county commissioners, as other indebtedness of the county is paid: *Provided*, The board must not pay a greater amount for advertising the delinquent tax list than is shown by the aggregate amount of costs for advertising, charged against the delinquents on the duplicate roll.

SEC. 2957. The county fund shall not make up any deficiency in the territorial, school, road, special or other funds by reason of taxes becoming delinquent and uncollectable, or for any other cause.

SEC. 2958. The assessor must not assess any property to another in the first district after the first Monday in April, or in the second district after the first Monday in February, at 12 o'clock meridian, because said person has purchased the same since that date, nor because said property has changed hands since said date; but every person must be assessed for the property owned or claimed by him or in his possession or control on said day and hour, and the assessor who violates this provision knowingly, subjects himself to a fine of fifty dollars for each violation.

SEC. 2959. The assessor must arrange his detail lists of statements from tax-payers in alphabetical order, and file the same with the county auditor at the same time that he files his assessment rolls, and the auditor must carefully preserve said statements in his office, subject to the inspection of any person during office hours.

SEC. 2960. The board of county commissioners of any county may authorize the auditor to have the detail lists of statements from tax-payers, bound and lettered, if they so elect.

SEC. 2961. All taxes must be paid in lawful money of the United States, unless otherwise provided by law.

SEC. 2962. The board of county commissioners must allow the county assessor the sum of five dollars per day in county warrants for each day necessarily employed in taking the assessment of his county and making up his assessment roll: *Provided*, That neither the assessor nor his deputy shall be allowed for any work done except in the first district between the first Monday in April and the first Monday of July, and in the second district between the first Monday in February and the first Monday in May of each year, both days inclusive, and the time necessarily required before the board of equalization.

SEC. 2963. The board of county commissioners may allow the county assessor one or more deputies, when in the opinion of the board such deputy or deputies are necessary to complete the assessment roll within the time prescribed by law; the board may prescribe the time such deputy or deputies are required, and shall pay to each deputy so employed the sum of four dollars per day for each day necessarily employed during said prescribed time.

SEC. 2964. The board of county commissioners must allow the auditor, treasurer and sheriff, a reasonable compensation for comparing the original and duplicate assessment rolls and such other work as they are required to perform, when no compensation is fixed by law for the same; and it shall be the duty of the county commissioners of the several counties to exact from the sheriff of the respective counties a good and sufficient bond to the county as collector of delinquent taxes before such sheriff receive the delinquent tax roll.

SEC. 2965. The assessor and sheriff and their bondsmen, and the treasurer and his bondsmen, are each liable for the acts of their respective deputies. Each deputy appointed by the assessor or treasurer, must take and subscribe an oath similar to those required of the assessor and treasurer, and file the same with the county auditor before entering upon the discharge of their duties.

Sec. 2966. After the annual settlement with the sheriff by the board of county commissioners, the auditor and sheriff must, on the first of each month, or within five days thereafter, compare the original and duplicate rolls, and the auditor must charge the sheriff with the amount of interest collected since the date of the last comparison, and must make the same entries in the original assessment roll as in previous comparisons.

Sec. 2967. The county treasurer must keep a general account, and an account with each fund, showing the amount of money received into each fund, and for what purpose received, and the amount paid out of each fund and for what purpose paid, and must, within thirty days after the May session of the board of county commissioners, in each year, publish a financial statement showing the workings and conditions of said accounts during the preceding fiscal year.

Sec. 2968. All taxes heretofore assessed must be collected under the act of 1879, entitled "An act to provide for the assessing and collecting of county and territorial revenue," and the amendments thereto, made at this session and in case of tax deeds given for the redemption of certificates of purchase at tax sales previously made, said deeds must be executed under the act of 1879.

Sec. 2969. Immediately after the board of equalization shall have completed their labors for the year the county auditor shall transmit to the territorial auditor the amount of the tax levy in the county for all purposes. His certificate shall be substantially in the following form:

Office County Auditor, }
For —— County, W. T. } ——————, 18—.

I further certify that the total amount of taxable property, both real and personal, for the county of —, and territory of Washington, for the year 18—, as returned by the county assessor and examined and approved by the county commissioners, is as follows, to-wit: Real property, $—; personal property, $—; total, $—. I hereby certify that the total amount of tax levy in said county for the year 18— is as follows: For territorial purposes, — mills, $—; for county purposes, — mills, $—; for school purposes, — mills, $—; for roads and bridges, — mills, $—; for poll, etc., $—

Witness my hand and official seal. ———, County auditor.

For ———, territorial auditor, Olympia, W. T.

[Sec. — All acts and parts of acts in conflict with this act are hereby repealed, *Provided*, That all taxes, assessed before this act takes effect must be collected under the act of 1879, entitled "An act to provide for the assessing and collecting of county and territorial revenue," and the amendments thereto made at this session, and in case of tax deeds given for the redemption of certificates of purchase of tax sales previously made, said deeds must be executed under the act of 1879.]

# CHAPTER CCXXIX.

## ROADS, FERRIES, BRIDGES AND TRAVEL ON PUBLIC HIGHWAYS.

SECTION
2970. County roads under supervision of county commissioners, except within limits of town or city.
2971. Applications for, how made.
2972. Notice of application, how given, proof, etc.
2973. Appointment of viewers.
2974. Duties of viewers and surveyor, report, etc.
2975. Necessary oaths may be administered by surveyor or viewers.
2976. Damages for location, how claimed and assessed.
2977. Damages when payable by county, when by petitioners.
2978. Appeals to district court on assessment of damages.
2979. Width of roads fifty feet, unless.
2980. Review of, to straighten or restore monuments.
2981. Application of owner of land, to change road over premises.
2982. Penalty for viewers neglecting duty
2983. Petitioners for view or review to give bond to pay expense thereof.
2984. Application for road to connect applicant's premises with county road.
2985. As to gates upon such road.
2986. Establishment of such road, damages and appeal.

SECTION
2987. County commissioners to establish road districts.
2988. Election of road supervisors.
2989. Auditor to furnish supervisor with road lists.
2990. List of persons liable to road work; taxable property affixed by auditor.
2991. Duty of supervisor as to road work and taxes.
2992. Omissions on road list may be supplied by supervisor; road, poll and property tax fixed, may be paid in labor; road and bridge fund, how provided.
2993. Notice to perform road work, penalty for neglect; taxes due by employes.
2994. Hours of labor, tools, implements and teams required.
2995 Supervisor to keep roads in repair, may purchase implements, materials, etc., penalty for persons obstructing drains; damages for acts of supervisor.
2996. Supervisor to erect guide boards.
2997. Extra labor to remove fallen timber or obstructions; repairing bridges.
2998. Certificates for extra labor performed.
2999. Supervisor's accounts and settlement thereof.
3000. Penalty for neglect of duty by supervisors, etc.
3001. Compensation of supervisors, viewers, surveyors, etc.

SEC. 2970. All county roads shall be under the supervision of the board of county commissioners of the county wherein the said road is located, and no county road shall be hereafter established, nor shall any such road be altered or vacated in any county in this territory, except by the authority of the board of county commissioners of the proper county: *Provided*, That this chapter shall not be construed to interfere with the jurisdiction over roads within the corporate limits of any city or town which, by the charter of said city or town is vested in the corporate authorities of said cities or towns, and such charter confers upon the corporate authorities of said cities or towns the sole power to expend the road labor and taxes collected within such corporate limits.

SEC. 2971. All applications for laying out, altering or vacating county roads shall be by petition to the board of county commissioners of the proper county, signed by at least twelve freeholders of the county, residing in the vicinity where said road is to be laid out, altered or vacated, which petition shall specify the place of beginning, the intermediate points if any, and the place of termination of said road.

SEC. 2972. When any petition shall be presented for the action of the board of county commissioners for laying out, altering or vacating any county roads, it shall be accompanied by satisfactory proof that notice, signed by at least one of the petitioners, has been given by advertisement, posted at the place of meeting of said board, and also in three public places in the vicinity of said road or proposed road, thirty days previous to the presentation of said petition to said board, notifying all persons concerned that application will be made to said board at their next term, for laying out, altering or vacating such road, as the case may be.

SEC. 2973. Upon the presentation of such petition and proof that notice has been given, as provided in the last section, the board of county commissioners may appoint two disinterested freeholders of the county as viewers of said road, and a surveyor who shall be also a viewer to survey the same, and shall issue an order directing said viewers and surveyor, on a day to be named in said order, or on their failing to meet on said day, within five days thereafter, to view, survey and lay out, or alter said road.

Sec. 2974. It shall be the duty of the viewers and surveyor, appointed as aforesaid, after receiving at least five days' previous notice from the county auditor, to meet at the time and place specified in the order of the board of county commissioners aforesaid, or within five days thereafter, and after taking an oath or affirmation faithfully and impartially to discharge the duties of their appointments respectively, they shall proceed to view, survey and lay out or alter said road, as prayed for in the petition, as near as in their opinion a good road can be made at a reasonable expense, taking into consideration the utility, convenience or inconvenience and expense which will result to individuals, as well as to the public, if such road shall be established and opened or altered; and the surveyor shall survey such road under the direction of the viewers, and cause the same to be conspicuously marked throughout, noting the angles and distances. A sufficient number of trees shall be blazed to mark the line of the road plainly. The beginning and termination of such road, and the termination of each mile thereon, shall be designated by a tree, if one is found at the point, if not, then by a stone containing at least 1,728 solid inches, if such stone can be found in the vicinity, if not, then by post of durable wood, at least four inches square and three and a half feet long, and firmly planted not less than eighteen inches in the ground. When posts are used two bearing trees shall be chosen and the course and distance of each of which from the post, the direction of the tree, and the kind of wood shall be noted by the surveyor. If no stone can be obtained and no tree suitable for bearing trees can be found the surveyor shall cause a mound to be erected of compact earth around the post, eighteen inches high and four feet square. The beginning and terminating points of the road, whether trees, posts or stones, shall be marked by the letter "R." The termination of each mile shall be marked by a figure indicating the number of the mile from the beginning of the road, followed by the letter "M." The mark required by this section, if occurring on stones, shall be cut legibly, at least one-eighth of an inch deep; if occurring on trees or posts they shall be plainly cut, at least one-fourth of an inch deep in the solid wood, the bark having been first removed. All bearing trees shall be marked on the side facing the post to which they correspond, with a figure and letter the same as that on the post, cut into the solid wood in the same manner as other trees are required to be marked. The surveyor shall also make out and deliver to one of the viewers without delay, a certified return of the survey of the said road, and a plat of the same, and the viewers or a majority of them shall make out and sign a report in writing, stating their opinion in favor of or against the establishment or alteration of such road, and set forth the reasons of the same, which report, together with the plat and survey of said road, or alteration, shall be delivered to the county auditor by one of the viewers, on or before the first day of the term of said board then next ensuing, and it shall be the duty of the said board of county commissioners, on receiving the report of the viewers aforesaid, to cause the same to be publicly read twice at the same meeting, and if no remonstrance with a greater number of remonstrators than there are names on the petition, (the names on the remonstrance or petition to be confined to the road district or districts established, or to be established where the proposed change is to be made) or petitions for damages be filed, and the commissioners being satisfied that such road will be of public utility, the report of the viewers being favorable thereto, the commissioners shall cause said report, survey and plat to be recorded, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue an order directing said road to be opened.

SEC. 2975. In all cases where any oath or affirmation is required to be taken by any person under the provisions of this chapter, the same may be administered by the surveyor or by one of the viewers, who has previously been sworn or affirmed.

SEC. 2976. If any person through whose lands county roads may be viewed or marked out shall feel that he or she would be injured by the opening of the same, such person may make complaint thereof in writing to the board of county commissioners, during the term at which the report of the viewers appointed to view said road is received, and if such complaint be made the county commissioners shall appoint three disinterested freeholders of the county, who shall meet at such time as may be designated by the county commissioners, or at such time as may be agreed upon by such freeholders, and after having been duly sworn or affirmed to discharge their duty faithfully and impartially, shall proceed and view said proposed road the whole distance through the premises of the complainant and assess and determine how much less valuable such premises of the complainant would be rendered by the opening of said road, and they shall report the same in writing to the county commissioners at the next regular term.

SEC. 2977. If the board of county commissioners are satisfied that the amount of damage so assessed is just and equitable and that the proposed road will be of sufficient importance to the public to cause the damages so assessed and determined to be paid by the county, the commissioners shall order the same to be paid to the complainant out of the county treasury, but if in the opinion of the county commissioners such proposed road is not of sufficient importance to the public to cause damages to be paid by the county, the commissioners may refuse to establish the same as a public highway unless the expense or damages or such part thereof as the commissioners may think proper shall be paid by the petitioners.

SEC. 2978. Any complainant who may conceive himself aggrieved by the assessment of damages, as prescribed by the two preceding sections, may, within three months after such report is adopted by the county commissioners, appeal therefrom to the district court of the proper county. Such appeal shall be taken to the district court in the same manner as appeals from justices of the peace, and if the appellant shall fail to recover a judgment more favorable than the report appealed from he shall pay all costs of the appeal.

SEC. 2979. All county roads shall be sixty feet in width unless the county commissioners shall, upon the prayer of the petitioners for the same, determine on a less number of feet in width.

SEC. 2980. When the place of beginning or true course of any public road shall become uncertain by reason of the removal of any marked tree or monument by which such road is designated, or from any other cause, the county commissioners of the proper county may appoint two disinterested freeholders of the county to re-view and, if they deem it necessary to straighten such road; and the re-viewers shall cause the said road to be correctly surveyed and marked throughout, as in case of a new road, and shall make a return of the survey and plat of such road to the county commissioners of the proper county; the commissioners shall cause the same, if approved, to be recorded as in other cases; and from thenceforth such road surveyed as aforesaid shall be considered as a public highway.

Sec. 2981. If any person or persons through whose lands any public highway is or may be established shall be desirous of turning such road through any other part of his or their lands, such person or persons may upon the notice and petition as presented in sections 2971 and 2972 of this chapter, apply to the county commissioners of the proper county to permit him or them to turn such road through any other part of his or their land, on as good ground and without materially increasing the distance to the injury of the public; and on receipt of such petition, accompanied by a sufficient bond to pay the costs and expenses to be incurred thereby, the commissioners may appoint two disinterested freeholders and a surveyor as re-viewers who, or a majority of such re-viewers, shall proceed to re-view the ground over which the road is proposed to be turned, and ascertain the distance such road will be increased by the proposed alteration, and make out a report in writing, stating the several distances so found, together with their opinion as to the utility of making such alterations; and if the re-viewers, or a majority of them, shall report to the commissioners that the prayer of the petitioner or petitioners is reasonable, and upon receiving satisfactory evidence that the proposed new road has been opened a legal width and in all respects made equal to the old road for the convenience of travelers, the commissioners may declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is [not] embraced in the new, and the person or persons petitioning for the alteration shall pay all the costs and expenses of the view, survey and return of the alteration.

Sec. 2982. If any viewer or viewers shall refuse or neglect to perform the duties required by this chapter, without making satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding ten dollars, to be recovered by an action before a justice of the peace of the proper county, which fine, when collected, shall be paid over without delay into the county treasury, and shall be placed in the road fund.

Sec. 2983. Upon application being made under the provisions of this chapter, for a view or re-view of any public road proposed to be laid out, altered or vacated, the county commissioners shall, before issuing an order to the viewers, require a bond to be executed by one or more of the petitioners for such view or re-view, with surety sufficient, to be approved by the commissioners, and made payable to the county in such sums as the commissioners shall direct, not exceeding two hundred dollars, conditioned that if the prayer of the petitioners be not granted and allowed, the person executing such bond will pay all costs and expenses that may be incurred by reason of such view or re-view.

SEC. 2984. Any person or persons whose land shall be so situated that it has no connection with any county road, may make application in writing to the county commissioners of his county, at a regular term, for a public road leading from his premises to some convenient county road, by first posting three notices fifteen days before said meeting in the district where said road is to be located, and thereupon the commissioners shall appoint three disinterested freeholders of the county as viewers, and cause an order to be issued directing them to meet on a day named in such order, to view and locate a public road, according to the application and notice, and to assess the damage to be sustained thereby; and after being duly sworn, or affirmed, faithfully and impartially to perform the duties of their appointment, and after at least three days' notice given to all persons through whose land such public road is to be located, such viewers shall proceed to locate and mark out a public road thirty feet wide, from some certain point on the premises of the applicant to some certain point on the county road, so as to do the least damage to the lands through which such public road is located, and they shall also at the same time assess damages sustained by the person or persons owning such land.

SEC. 2985. The viewers appointed in accordance with provisions of the preceding section shall have power to determine in all cases whether or not gates shall be placed at proper points on said road, and assess damages in accordance with that determination.

SEC. 2986. The viewers so appointed, or a majority of them, shall make a report to the county commissioners, at the next regular term, of the public road so located by them, and also, the amount of damages, if any, assessd by them, and the person or persons entitled to such damages; and if the county commissioners are satisfied that such report is just, and after payment by the applicant of all costs of locating such road and the damages assessed by the viewers, the commissioners shall order such report to be confirmed, and declare such road to be a public road, and the same shall be recorded as such, and any person aggrieved by the assessment of damages, may appeal within ninety days after such confirmation of the report to the district court.

SEC. 2987. The board of county commissioners shall, as often as they may deem necessary, but not oftener than once a year, divide their respective counties, or any part thereof, into suitable and convenient road districts, and cause a brief description of the same to be entered on the county records.

SEC. 2988. The supervisor of each road district in this territory shall, at least ten days before the first Monday in April of each year, cause three notices to be posted up in three conspicuous places in his road district, giving notice that there will be an election held in such district on the first Monday in April, at two o'clock in the afternoon, at some convenient place in said district to be specified in said notice, for the purpose of electing a road supervisor for the next succeeding year, at which election the old supervisor shall act as chairman, if present, if not present a chairman shall be elected by the voters present. The meeting shall also elect a secretary who shall record the proceedings of the meeting, and all male persons in the district who are required to labor on the roads or who have road taxes to pay, may vote at such election, and the person receiving the highest number of votes shall be considered elected supervisor for that year, who shall within ten days, and before entering upon the duties of said office, take an oath to faithfully discharge the duties of his office, and if required by the county commissioners, shall enter into bond to the county, with one or more sureties, in any sum not exceeding one thousand dollars, to be approved by the county commissioners, to the effect that he will faithfully account for all money coming into his hands by virtue of his office; *Provided, however*, If from any cause there is no election on the first Monday of April, the supervisor or any qualified elector who is a taxpayer of the district may call a special election by giving notice as provided in this section, which election shall be held on the third Monday of the same month. It shall be the duty of the chairman and secretary of such meeting to notify the county auditor in writing, before the next regular meeting of the board of county commissioners, that the district has elected a supervisor and give his name in full; but in case any road district shall fail to notify the county auditor in writing that they have elected a supervisor, it shall be the duty of the county auditor to report what districts have failed to elect to the county commissioners at their regular May meeting, and they shall appoint supervisors to fill all vacancies in such road districts.

Sec. 2989. The county auditor shall furnish the several supervisors of roads in his county with their respective road lists, on or before the second Monday in April of each year. Said list shall be properly ruled with the spaces for names and amount and containing directions to supervisors when to return the same.

Sec. 2990. It shall be the duty of every supervisor of roads to obtain the names and make out in alphabetical order a list of all persons liable to perform labor on the public roads within his road district, and file the same with the county auditor on or before the first Monday in May in each year, whose duty it shall be to affix to each name the amount of taxable property owned by each person residing or owning property therein, which list shall be returned to the road supervisors in the second assessment district, on or before the first day of June of each year, and in the first assessment district, on or before the first day of September.

Sec. 2991. The road supervisors shall proceed to collect the road taxes in their respective districts in the manner hereinafter provided, and it shall be the duty of each supervisor of roads in the several counties in this territory to return their road lists to the county auditors of their respective counties on or before the thirty-first day of December in each year, properly certified to, showing the amounts paid thereon, by whom paid, and whether the amounts so paid were paid in work or money. They shall also, at the same time, return to the auditors a delinquent list, showing the names of all persons who have failed to pay their road taxes for the current year, together with the amount due from each. The county auditors shall add a penalty of twenty-five per centum to all road taxes so returned delinquent, and shall place the names of the persons so delinquent, together with the amount due from each on the regular delinquent tax list, and charge the amount of such delinquent road taxes to the sheriff, who shall collect the same in the manner and at the time he collects other delinquent taxes: *Provided*, That in the counties of Columbia, Klickitat, Skamania, Spokan, Stevens, Walla Walla, Whitman and

Yakima the road supervisors may retain their road lists for the period of twelve months before returning their delinquent lists, and such delinquent road taxes shall be added to the next regular delinquent list, and collected as hereinbefore provided. All moneys so collected shall be paid into the county treasury of the proper county, and the respective county treasurers shall turn the same over to the supervisor of the road district to which such tax belongs, to be expended in that district.

SEC. 2992. Whenever the supervisor shall, from any cause, have neglected or omitted to place on his list the name of any person or property within the time required by law, he may at any time afterwards place the name of any such person or property on the list and assess the road tax due, which assessment shall in all respects be valid as if made in due form. It shall be the duty of the county commissioners of the several counties to levy and assess a road tax of four dollars on every male person liable to perform labor on the public roads, between the ages of twenty one and fifty years, except persons that are a public charge or too infirm to perform labor, idiotic and insane persons, and an active fireman who has been a member of any fire company in this territory for a period of one year preceding the assessment of taxes; also assess not less than one nor more than five mills on every dollar's worth of property as returned by the county assessment, which tax shall be paid in money, or in labor at the rate of two dollars per day: *Provided*, That the county commissioners may, in addition, levy a special tax of two mills, on every dollar's worth of property, as returned by the assessor, which tax shall be paid in money, at the time and in the manner provided for the payment of county and territorial taxes; and the money arising from said tax shall be known and designated as the "road and bridge fund," and may in the discretion of the county commissioners be applied to build or repair public bridges, or roads: *Provided further*, That in the county of Lewis the above two mills shall be used for the purpose of building bridges only.

SEC. 2993. The supervisor must notify every person within his road district subject to road labor as aforesaid, to perform the work assessed on the public roads or bridges within his district; and if any person subject to road labor as aforesaid, shall, after three days' notice, either personally or by writing left at his usual place of abode, or sent by mail to his post office address, by the supervisor, or by any other person by his direction, neglect or refuse to attend by himself or substitute, at the time and place designated by the supervisor, or having attended, shall refuse to obey the directions of the supervisor, or shall pass his time in idleness or inattention to the labor or duties assigned, every such delinquent shall thereby become liable to an additional assessment of twenty per cent. of his original tax; upon refusal to comply with the directions or orders of said supervisor, he shall return the same as delinquent, to be collected as by law provided for delinquent taxes. It shall be the duty of every person, firm, corporation or company, or their agents, who have or may have in his or their employ, persons working for wages, who are liable to perform road labor under the law, whose names are not placed on the list of the road supervisors, to furnish to such supervisors on demand the names of such persons employed by whatever name, number, or appellation they are known by such person, firm, corporation or company, or by his or their agent; and it shall also be the duty of such firm, person, corporation or company to retain or cause to be retained from the wages of such person or persons a sufficient amount to pay the tax due from them respectively, and if a sufficient amount is not due to the person or persons so employed, then such person, firm, corporation or company shall pay to the supervisor on demand whatever sum may be due to such person or persons so employed, and if a sufficient amount shall thereafter become due to such person or persons, it shall be retained and paid to the road supervisor on demand: *Provided*, That such person or persons so employed, neglect or refuse to perform their road labor as required by law and the provisions of this chapter: *Provided*, That if any such person, firm, corporation or company, or their agents shall refuse or fail to furnish, on demand, to the supervisor, the names, number or appellation of such persons so employed, or having furnished such information, shall fail to pay the road tax due from them as herein provided, such person, firm, corporation or company shall become personally liable for the road tax of such employes, which may be collected by a suit in the name of the proper county, in any court having jurisdiction. All money so collected shall be for the benefit of the road district of which said employes were residents at the time the tax became due.

SEC. 2994. Every person notified to labor on the public roads, under the provisions of this chapter, shall be required to appear at the place appointed by the supervisor, at the hour of eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct, and work industriously and diligently, doing at least eight hours' faithful labor in each day, at such work and in such manner as shall be directed by the supervisor; and such supervisor may, if he deem it necessary, order any person owning the same to furnish a team of horses, mules or oxen and wagon, scraper or plow, to be employed or used on the roads under the direction of the supervisor, who shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper or plow, in discharge of any labor due from such person.

SEC. 2995. The supervisor of roads shall open, or cause to be opened, all public roads which have been or may hereafter be laid out and established according to law, in any part of his road district, and shall keep the same in as good repair as the means at his command will allow; (the labor in his district as assessed as provided in section ——); and he shall have authority to purchase for the use of the road district, any plows, scrapers, or other implements, which he may think proper, and to enter upon any lands adjoining or near the public road, and may gather, dig and carry away any stone, gravel or sand, and cut down and carry off any trees or wood necessary for the making and repairing of any public road, and to purchase any timber, plank or other material necessary for making or repairing any public road in his district, and to enter upon any land adjoining or lying near any public road in his road district and cut, open or construct such drains and ditches as he shall deem necessary for the making or preservation of such roads, doing as little injury as may be to such lands; and any person stopping or obstructing the drains or ditches so made shall forfeit the sum of twenty dollars for each offense, to be recovered and appropriated as provided in this chapter: *Provided*, That in all suits decided adversely to the supervisor, hereby authorized to be instituted by him, he shall be allowed a credit, in his yearly settlement, of costs he may have been compelled to pay on account of such adverse decision or decisions: *And, provided further*, If any person shall feel aggrieved by the act of any supervisor cutting or carrying away timber or stone as aforesaid, he may make complaint thereof in writing to the county commissioners at any regular meeting within six months after the cause of such complaint shall exist, and such commissioners shall proceed to assess and determine the damages, if any, sustained by the complainant and cause the same to be paid out of the county treasury.

SEC. 2996. Every supervisor shall erect and keep up at the forks of every highway and every crossing of public roads within his road district, a guide or finger board, containing an inscription in legible letters, directing the way and specifying the distance to the next town or public place situated on each road respectively.

SEC. 2997. If at any time after the return of the delinquent tax list of any year and before the list of the next year shall come into the hands of the supervisor, any public road shall become obstructed by fallen timber, or from any other cause, or any bridge shall be impaired, or become dangerous for the passage of teams or travelers, the supervisor of the road district, upon being notified thereof, shall forthwith cause such obstruction to be removed or bridges repaired, for which purpose he shall immediately order out such number of inhabitants of his district as he may deem necessary to remove such obstruction or to repair such bridge; and all persons so ordered out, shall, after having received one day's notice, be subject to the same restrictions and liable to the same penalties as if ordered out under this chapter.

SEC. 2998. In all cases where any person shall, under the direction of the supervisor of roads, perform more labor upon the public roads than may have been assessed upon him under the provisions of this act, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate may be transferred and received in discharge of the labor of any other person within the same district, to the amount of labor specified in such certificate, or may be received from the holder in satisfaction of labor on the roads in such road district in any subsequent year, for the amount of labor specified therein.

SEC. 2999. Every supervisor shall keep an account of the days' work performed on the roads, in payment of road tax, and by whom performed, and also an account of all moneys collected or received by him for road tax, and such supervisor shall each year return his account to the board of county commissioners for examination and settlement, at the February term thereof, which account must be accompanied with proper receipts and vouchers showing the nature of the work done, the amount paid therefor, and the name of the person who performed the labor, and the supervisor must pay over any moneys in his possession to his successor in office.

SEC. 3000. Any supervisor of roads, who shall neglect or refuse to perform the several duties enjoined upon him by this chapter, or who shall, under any pretense whatever, give or sign any receipt or certificate purporting to be a receipt or certificate for money paid or labor performed, unless the money shall have been paid or the labor performed prior to the giving or signing of such receipts or certificate, shall forfeit for every such offense not less than five nor more than fifty dollars, for the use of his county, to be recovered before any justice of the peace having jurisdiction of the same, in the name of the county; and it is hereby made the duty of the commissioners to sue for the same.

SEC. 3001. Every supervisor of roads shall receive for each day necessarily employed in the performance of any of the duties required by this act, over and above the number of days' work required by law to be performed by such supervisor, the sum of two dollars and fifty cents, to be paid by the county after the report of the supervisor shall have been received and approved by the commissioners. Every person employed as surveyor under this act, shall receive as compensation the sum of five dollars per day; each viewer or re-viewer the sum of two dollars per day; *Provided*, That no surveyor, viewer or re-viewer shall receive any compensation until he shall certify to the county commissioners that he has been necessarily employed the number of days for which he claims pay, and that he has complied with the requirements of this chapter.

## CHAPTER CCXXX.

### FERRIES.

SECTION
3002. County commissioners may grant licenses.
3003. Rate of tax for granting.
3004. To whom licenses may be granted.
3005. Notice of application for license.
3006. Bond of applicant.
3007. Must keep boats in good repair.
3008. General duties of keepers of ferries.

SECTION
3009. Commissioners to fix rates of ferriage.
3010. Rates may be altered by commissioners.
3011. List of rates to be posted.
3012. Persons to be ferried as they come.
3013. Ferry keeper has exclusive franchise, except.
3014 License may be forfeited; proceeding.
3015. Penalty for keeping without license.

SEC. 3002. The board of county commissioners of any county in this territory may grant a license to any person entitled and applying therefor, to keep a ferry across any lake or stream within its respective county, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioners, not exceeding five years.

SEC. 3003. The board of county commissioners shall charge such sum as may appear reasonable—not less than one dollar nor more than one hundred dollars per annum—for such license, and the person to whom such license shall be granted, shall pay to the county treasurer the tax for one year in advance, taking his receipt therefor; and upon the production of such receipt the county auditor shall issue such license under the seal of his office.

SEC. 3004. No such license shall be granted to any person other than the owner of the land embracing or adjoining such lake or stream where the ferry is proposed to be kept, unless such owner shall neglect to apply for such license; and whenever application shall be made for a license by any person other than such owner, the board of county commissioners shall not grant the same, unless proof shall be made that the applicant caused notice, in writing, of his intention to make such application to be given to such owner, if residing in the county, at least ten days before the session of the board of county commissioners at which application is made.

SEC. 3005. Every person intending to apply for a license to keep a ferry at any place, shall give notice of such intention by posting up at least three notices in public places in the neighborhood where the ferry is proposed to be kept, twenty days prior to any regular session of the board of county commissioners at which the application shall be made.

Sec. 3006. Every person applying for a license to keep a ferry shall, before the same is issued, enter into a bond with one or more sureties, to be approved by the county auditor, in a sum not less than one hundred nor more than five hundred dollars, conditioned that such person will keep said ferry according to law; and if default shall at any time be made in the condition of such bond, damages, not exceeding the penalty, may be recovered by any person aggrieved, before any court having competent jurisdiction.

Sec. 3007. Every person obtaining a license to keep a ferry shall provide and keep in good and complete repair the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficent number of discreet and skillful men to attend and manage the same; and he shall also at all times keep the place of embarking and landing in good order and repair, by cutting away the bank of the stream so that persons and property may be embarked and landed without danger or unnecessary delay.

Sec. 3008. Every person obtaining a license, as aforesaid, shall give constant and diligent attention to such ferry, from daylight in the morning until dark in the evening, of each day, and shall, moreover, at any hour in the night if required, except in cases of imminent danger, give passage to all persons requiring the same on the payment of double rate of ferriage allowed to be taken in the daytime; and if he shall at any time neglect or refuse to give passage to any person or his property, he shall forfeit and pay to the party aggrieved, for every such offense, the sum of five dollars, to be recovered before any justice of the peace having jurisdiction; and he shall, moreover, be liable in an action at law for any special damage which such person may have sustained in consequence of such neglect or refusal; but no forfeiture or damages shall be recovered for a failure or refusal to convey any person or property across such stream when it is manifestly hazardous to do so, by reason of any storm, flood or ice, nor shall any keeper of a ferry be compelled to give passage to any person or property until the fare or toll chargeable by law shall have been fully paid or tendered to such keeper.

Sec. 3009. Whenever the county commissioners of any county shall grant a license to keep a ferry across any lake or stream, such commissioners shall establish the rates of ferriage which may be lawfully demanded for the transportation of persons and property across the same, having due regard to the breadth and situation of the stream, and the dangers and difficulties incident thereto, and the publicity of the place at which the same shall have been established, and every keeper of a ferry who shall at any time demand and receive more than the amount so designated for ferrying, shall forfeit and pay to the party aggrieved, for every such offense, the sum of five dollars, over and above the amount which shall have been illegally received, to be recovered before any justice of the peace having jurisdiction.

Sec. 3010. The county commissioners of the several counties are hereby authorized to fix, alter and establish, from time to time, the rates of ferriage to be levied and collected at all ferries now established, or hereafter to be established by law, within or bordering upon the county lines of any of the counties in this territory.

Sec. 3011. Every person licensed to keep a ferry shall post up, in some conspicuous place near his ferry landing, a written or printed list of the rates of ferriage which are chargeable by law at such ferry, which list of rates shall at all times be written or printed in a plain, legible manner, and posted up so near the place where persons shall pass across such ferry, that the same may be easily read; and if at any time such keeper shall neglect or refuse to post and keep up such list, it shall not be lawful to charge or take any ferriage or compensation at such ferry, during the time of such delinquency.

Sec. 3012. All persons shall be received into the ferry boats and conveyed across the stream over which such ferry shall be established, according to their arrival at the same, and if any keeper of a ferry shall act contrary to this regulation, he shall forfeit and pay the sum of ten dollars for every such offense to the party aggrieved, to be recovered before any justice of the peace having jurisdiction: *Provided*, That public officers on urgent business, post riders, couriers, physicians, surgeons and midwives shall in all cases be first carried over, when all cannot go at the same time.

Sec. 3013. Every person licensed to keep a ferry, according to the provisions of this chapter, shall have the exclusive privilege of transporting all persons and property over and across the stream where such ferry is established, and shall be entitled to all the fare arising by law therefrom: *Provided*, That nothing herein contained shall be construed to prevent any person from crossing over such stream at such ferry in his own boat or to take in and carry over his neighbor, when the same is done without fee or charge, and not with intent to injure any person licensed to keep a ferry.

Sec. 3014. If any person licensed to keep a ferry shall fail to pay the tax assessed thereon, when due, or shall not provide and keep in good and complete repair, the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or shall neglect to employ a sufficient number of skilled and discreet ferrymen, as provided in section 3012, of this chapter, within three months from the time license shall be granted, or if such ferry shall not at any time be kept in good condition and repair, agreeably to the provisions of this chapter, or if the same shall be abandoned, disused or unfrequented for the space of six months, at any one time, it shall be lawful for the board of county commissioners of the proper county, on complaint being made in writing, to summon the person licensed to keep such ferry, to show cause why such license should not be revoked and to decide thereon according to the testimony adduced and the laws of this territory, which decision when made shall be valid to all intents and purposes, subject to be reviewed by the district court: *Provided*, That if any ferry shall be disused by reason of the stream over which the same is established, being fordable at certain seasons of the year, or by reason of the travel being subject to periodical fluctuations, it shall not work a forfeiture within the meaning of this section.

Sec. 3015. Any person who shall maintain any ferry and receive ferriage without first obtaining a license for the same, shall pay a fine of ten dollars for each offense, to be collected for the use of the county, by suit before any justice of the peace having jurisdiction; and any person is hereby authorized to bring such suit: *Provided*, That it shall not be considered unlawful for any person to transport any other person or his property over any stream for hire, when it shall be made evident that there is no ferry, or that the ferry established at such place was not in actual operation at the time, or in sufficient repair to have afforded to such person or his property a safe and speedy passage.

## CHAPTER CCXXXI.

### TOLL ROADS.

SECTION
3016. Public roads may be leased as toll roads by commissioners.
3017. Mode of proceeding to lease roads.
3018. Bids not to be considered without bond accompanies.
3019. Contract of lease and bond of lessee.
3020. Qualification of sureties.
3021. Road, how to be constructed.
3022. Erection of toll gates and collection of toll.
3023. Illegal tolls and refusal to pay or evasion of tolls; penalty.
3024. Road leased still a public highway.
3025. Lease may be cancelled or modified.
2026. Tolls only chargeable upon specified classes of persons and property.
3027 Basis or unit of toll defined.
3028. Number of gates to be specified in lease.
3029. Lease shall be awarded to lowest bidder; rejection of bids and re-offer of road.

SEC. 3016. Whenever a public road in any county in this territory is or may hereafter be so located that there is little or no local labor along the line of said road, the board of county commissioners of the county where such road or any portion of the same is or may hereafter be located, is authorized to lease such road or any portion of the same, to any person or corporation, to open, improve and keep the same in repair for a period not exceeding ten years, with the right in consideration thereof to collect and receive tolls for travel thereon, in the manner provided in this chapter.

SEC. 3017. Whenever it becomes expedient and lawful, under the provisions of this chapter, to lease a public road, or any specific section thereof, the board of county commissioners shall make an order to that effect, specifying therein the termini thereof, and directing the county auditor to cause the same to be published in some weekly newspaper of general circulation therein, for a period not less than four weeks, and in like manner to give notice therewith that sealed bids will be received at such auditor's office, for the leasing of such road until a particular hour of a certain day thereafter, not more than ten days after the expiration of the publication of such order or notice.

SEC. 3018. No bids shall be considered unless accompanied by a bond executed by two or more sureties in the sum of two thousand dollars, to be void upon condition that the bidder, if the lease is awarded to him, will, within ten days thereafter, enter into the contract for keeping the road, and give the bond to secure the performance thereof, as hereinafter provided.

SEC. 3019. The contract for the lease shall be subscribed by the lessee and approved by the board of county commissioners and filed with the county auditor. At the time of filing the contract the lessee shall give a bond to the county in a sum to be fixed by the board of county commissioners, not less than two thousand nor more than ten thousand dollars, with two or more sufficient sureties, to be void upon the condition that the lessee will faithfully perform the contract in relation to such road, and comply with the provisions of this chapter concerning the same.

SEC. 3020. The sureties in the bond mentioned in the last section shall have the qualifications of bail upon arrest, and shall justify in like manner before the county commissioners or the clerk thereof.

SEC. 3021. A road leased under this act shall be cleared of standing timber and have a track for traveling, of the same width, and be kept in the same order, and the streams or other waters on the line thereof, shall be bridged or ferries established, and shall be made of such grade and of such materials as the contract shall specify.

SEC. 3022. No toll shall be collected for travel on such roads, except at a gate, nor unless a sign-board be posted at such gate, in full view of the travel on the road, with the rates of toll plainly written or printed thereon. The lease shall specify the number of gates that may be placed on the road to which it relates, and the location thereof, and thereafter the number of such gates shall not be increased; but the board of county commissioners, upon the application of the lessee may, at any time, for good reasons, authorize the lessee to change the location of such gates, or any of them.

SEC. 3023. The rates of toll that the lessee may collect and receive shall be specified in the lease, and none other can be charged; and any person who shall pass through a gate upon such road without paying toll legally charged thereat, or when traveling on such road, shall go around such gate with intent to avoid the payment of such toll, shall be liable to the lessee for three times the amount of such toll; and any lessee of such road who shall by himself, his agent or servant, collect or receive of any person illegal toll for traveling on such road, shall be liable to such person for three times the amount of such toll.

SEC. 3024. A road leased, as provided in this chapter, is nevertheless to be deemed a highway; but no footman shall be required to pay toll for traveling on such road, nor shall any person, while traveling from one portion of his farm to another, with or without any stock or vehicle, or person in his employ, or in going to, or returning from church, a funeral or an election.

SEC. 3025. The board of county commissioners has authority, upon the application of the lessee, to cancel or modify the lease, upon such terms as may be equitable and just, and the proper prosecuting attorney may maintain an action against the lessee, in the name of the county, to have such lease declared forfeited, whenever the lessee shall fail or neglect to comply with the provisions thereof, and of this chapter.

SEC. 3026. Tolls are only chargeable by the lessee upon the following items, or classes of person or property: (1.) Sheep and hogs; (2.) Horses, mules, asses, or neat cattle, whether being used for draught, or led or driven loose; (3.) A person other than a footman and not traveling in a vehicle; (4.) A two-wheeled vehicle, loaded or unloaded; (5.) A four-wheeled vehicle, loaded or unloaded.

SEC. 3027. The rate of toll to be charged by lessee upon each item or class specified in the last section is as follows: (1.) The basis or unit of toll is the charge for a sheep or hog, to be known as a single toll; (2.) For any animal, described in subdivision two, of such section, four such tolls may be charged; (3.) For any person described in subdivision three, of such section, ten such tolls may be charged; (4.) For any vehicle described in subdivision four, of such section, twenty such tolls may be charged; (5.) For any vehicle described in subdivision five, of such section, forty such tolls may be charged.

Sec. 3028. The order mentioned in this chapter, shall specify the number of gates to be placed on the road, the material for the construction thereof, and the period for which the same is to be let. The bid shall specify the unit or rate of toll upon a sheep or hog which the bidder is willing to accept for keeping the road; and such bid shall be deemed a bid for tolls, as to the other items or clauses mentioned in this chapter, in the proportion of such unit or rate as specified in section fifty-eight.

Sec. 3029. Upon opening the bids, the lease shall be awarded to the lowest bidder, having due reference to the fact of which of them is best qualified for the undertaking. The board of county commissioners have the power and it is their duty to reject any or all bids, when there appears sufficient cause, and may subsequently re-offer and let the same.

## CHAPTER CCXXXII.

### LAW OF TRAVEL ON PUBLIC HIGHWAY.

SECTION
3030. Law of the road; go to the right.
3031. Penalty for violating previous section.

SECTION
3032. Employer liable for driver's violation.

Sec. 3030. Whenever any persons driving any vehicle shall meet on any public highway in this territory whether owned or kept by a corporation or private person, the persons so meeting shall seasonably turn their vehicles to the right of the center of the road, so as to permit each vehicle to pass without interfering with or interrupting the other.

Sec. 3031. If any person shall willfully violate the provisions of this chapter, he shall forfeit and pay the sum of five dollars, for every such violation, to the party injured, to be recovered by a civil action, and such further damage in the same action as such party may directly sustain by reason of such violation.

Sec. 3032. That whenever any person driving a vehicle, who shall violate the provisions of this chapter, is at the time in the employ of another, such other person is liable for the penalty herein provided, the same as if he were the driver of such vehicle at the time of such violation; but an election to sue the driver or employer is a bar to an action against the other.

## CHAPTER CCXXXIII.

### BRIDGES ON COUNTY ROADS.

SECTION
3033. Commissioners may appropriate money to build or repair bridges.
3034. Building of bridges, how contract let.

SECTION
3035. Of bridges over streams which are boundary line of two counties.

Sec. 3033. The board of county commissioners of the several counties in this territory are hereby authorized to apply, in their discretion, any road money in the county treasury, not otherwise appropriated, toward defraying the expenses of building or repairing bridges on any of the county roads within their respective counties

Sec. 3034. The board of county commissioners may appoint some suitable person to superintend the letting and building, repairing and receiving the bridges when done. When a bridge is to be built, said superintendent shall put up three notices in the county, at least twenty days prior to the time of letting such bridges, one of which shall be posted in the neighborhood where the bridge is to be built or repaired, which notice shall state the general plan of said bridge and statement of the proposed repairs, also the time and place of letting the same, which shall be let to the lowest responsible bidder, at public outcry, and when said bridge is completed the superintendent shall give the contractor a certificate for the same, if in his judgment the bridge has been built or repaired according to the contract, and make due report thereof to the board of county commissioners, which certificate shall be a voucher to the board to pay the money: *Provided*, *however*, That whenever, in the discretion of the board of county commissioners an emergency may require it, they may authorize repairs without such notice.

Sec. 3035. Whenever it shall be deemed necessary, by the board of county commissioners of any county in this territory, to erect or repair a bridge over any stream which is a boundary line between two counties, the board of county commissioners of said adjoining counties are hereby authorized to unite for the purpose of erecting or repairing such bridge; and when any person or persons interested shall apply in writing to the board of county commissioners of either of the counties interested, such board shall proceed to appoint three viewers, who shall, after being first sworn to well and faithfully perform their duties as such viewers, proceed to view the bridge proposed to be repaired, or the site designated for such new bridge, and make an estimate of the cost of such repairs or erection, and of their proceedings make due report to the commissioners, together with a plan and specification of such new bridge, or a statement of proposed repairs. If the board shall decide to appropriate the amount necessary for its erection or repairs, they shall submit such estimate of costs, together with the plan of such bridge, or statement of repairs to the county commissioners of the other county interested; and if said commissioners shall approve the same and agree to defray one-half of the whole sum estimated or appropriated, together with the one-half of the necessary cost of view, then the board of county commissioners, to which application was first made, shall proceed to appoint a superintendent, and build said bridge, or make said repairs, as provided for in this chapter, the one half of the whole costs and expenses of which shall be a legal claim against, and be paid by, said adjoining county.

## CHAPTER CCXXXIV.

### SAVING AND REPEALING PROVISIONS, GENERAL ROAD LAW, APPROVED DECEMBER 1ST, 1881.

| Section | | Section | |
|---|---|---|---|
| 3036 | Saving and repealing provisions. | 3037. | General road law, approved Dec. 1, 1881. |

Sec. 3036. All acts and parts of acts in conflict with the provisions of this act are hereby repealed: *Provided*, That an act in relation to "roads and highways in the county of Jefferson," approved Nov. 9th, 1877, and an act entitled, "An act to provide for the collection of road tax, and the maintenance of roads in Kitsap county," approved November 10th, 1879, "An act donating the road property tax of San Juan county to school fund of said county," approved November 9th, 1877, are hereby declared to remain, and be in force, and where, in said acts, reference is made to the general road law, this act shall govern: *Provided, however*, That such repeal, except where it is otherwise provided in this act, shall not affect any act done, or forfeiture incurred, or any right established, accrued or accruing, or taxes levied and assessed before the passage of this act, or suit or other proceeding pending on the day this act goes into effect, save only that the proceedings thereafter had shall conform as far as practicable to the provisions of this act: *And still further provided*, That taxes heretofore levied and assessed, may also be collected under the provisions of the law hereby repealed: *Provided, further*, That if, through any omission or inadvertence in designating the time for delivering of road lists to supervisors, the date in first district should precede the August term of the county commissioners' court, the time shall be computed from said August term, to conform to the law making said term the term for equalization of assessments in said first district.

SEC. 3037. Road supervisors may put a portion of the road work on such small streams and sloughs as are used as public highways.

## CHAPTER CCXXXV.

### APPROPRIATIONS FOR ROADS AND BRIDGES BY COUNTY COMMISSIONERS.

SECTION
3038. Appropriations may be made for roads and bridges.
3039. Counties graded according to taxable property.
3040. Amount of appropriations prescribed.

SEC. 3038. The several boards of county commissioners shall have power and they are hereby authorized to make appropriations from the general county fund for the purpose of improving public county roads and building and repairing bridges.

SEC. 3039. Counties for this purpose shall be rated in three several grades as follows: (1.) All counties in which the assessed taxable property exceeds two millions of dollars; (2.) All counties whose assessed taxable property is over one and one-half millions and does not amount to two millions; (3.) All counties whose taxable property is under one and one-half millions of dollars.

SEC. 3040. In counties of the first grade the county commissioners may appropriate not to exceed three thousand dollars. In counties of the second grade not to exceed two thousand dollars. In counties of the third grade not to exceed one thousand dollars: *Provided*, That this chapter shall not include the counties of Lewis, Klickitat, Yakima, Pacific, Kitsap and Chehalis.

## CHAPTER CCXXXVI.

### LEGALIZATION OF COUNTY ROADS.

SECTION
3041. When county commissioners may order re-survey.
3042. Day to be fixed for hearing on re-survey.
3043. Notice of re-hearing; form of, and how given.
3044. Proceedings of commissioners at hearing, and appointment of appraisers when necessary.
3045. When commisioners shall refuse charges for damages and report of appraisers.
3046. Proceedings of commissioners, where objections made to survey and establishment of road.
3047. County auditors to keep a highway plat book and what shall be entered in same.
3048. Expenses payable out of county treasury.

SEC. 3041. Where by reason of the loss or destruction of the field notes of the original survey, or in case of defective survey or record, or in case of such numerous alterations of any county road since the original location and survey, that its location cannot be accurately defined by the papers on file in the proper county auditor's office, or where, through some omission or defect, doubts may exist as to the legal establishment or evidence of establishment of any county road, or highway, the board of county commissioners of the proper county may, if they deem it necessary, order such highway, or any part of a county road used and traveled by the public, to be resurveyed, platted and recorded as hereinafter provided.

Sec. 3042. A copy of the field notes, together with a plat of any highway or county road surveyed under the provisions of the preceding section, shall be filed in the office of the county auditor, and thereupon he shall designate a day at a regular term of the board of county commissioners not less than twenty days from the publication of said notice, upon which said board will, unless good cause be shown against so doing, approve of such survey and plat, and order them to be recorded as in cases of the original establishment of a county road.

Sec. 3043. At least twenty days before the day fixed by the auditor, as above provided, a notice in which shall be inserted the name of each resident owner or occupier of said land lying on the portion of road sought to be legalized, or abutting on the line of survey, shall be published four successive weeks in some newspaper published in the county, if any such there be, or by posting the same in five public places in the vicinity of said survey, which notice may be in following form: "C D, —— resident on that portion of the county road used and traveled as such for — years, commencing at —, in — county, running thence, (name distance and in general terms points of location), and terminating at —, has been resurveyed, and the board of county commissioners will, at their next term, hear and determine whether the road herein described and included in said survey, shall be ordered as a lawful county road and public highway, and objections thereto, or claims for damages, must be filed in the auditor's office on or before the first day of the — term, A. D. 18—, or the road herein above described will be declared a county road and public highway." A B, County Auditor.

Sec. 3044. If no objections or claims for damages are filed on or before the first day of the term fixed for hearing the same, the board of county commissioners shall proceed to declare that such road included in said survey is a lawful county road. If objections are made to the establishment of the highway, or claims for damages are filed, three disinterested freeholders shall be appointed to appraise the damages, the report of whom shall be made to the next term of the county commissioners' court.

Sec. 3045. No claim for damages will be allowed to any person who did, upon the original location of said road, receive damages, or who, or whose grantor applied for, or assented to such road passing over said land, or who, when making settlement upon the tract by him occupied, found the said road in public use and traveled. The appraisers will report any and all acts of the owners of said land or their grantors which show compensation, dedication or assent to such land being used as a public highway. The board may increase, diminish, or refuse to allow any damages; to which order the parties may appeal, within three months.

Sec. 3046. In case objection shall be made in writing by any person claiming to be injured by the survey made, the board of county commissioners shall have full power to hear and determine upon the matter, and may, if deemed advisable, order a change to be made in the survey. Upon the final determination of the board, or in case no objection be made at the term named in the notice of the survey, they shall approve of the same and cause the field notes and plat of the county road to be recorded, as in case of the establishment and alteration of highways, and thereafter such records shall be received by courts as conclusive proof of the establishment and lawful existence of such county road and public highway, according to such survey and plat.

SEC. 3047. If the same, or what is equivalent thereto, has not heretofore been done, the county auditor shall within six months after this act takes effect, cause every public road in his county, the legal existence of which is shown by the records and files of his office, to be platted in a book, to be obtained and kept for that purpose, and to be called the "highway plat book." Each township shall be platted separately, on a scale of not less than four inches to the mile, and such auditor shall have all changes in or additions to the highways, legally established, immediately entered upon said plat book, with appropriate references to the files in which the papers relating to the same may be found.

SEC. 3048. The expenses, incurred by the provisions of this chapter, shall be paid out of the county funds not otherwise appropriated.

## CHAPTER CCXXXVII.

### STREETS AND ALLEYS IN TOWNS AND CITIES PUBLIC HIGHWAYS.

SECTION
3049. Roads, streets and alleys in towns and cities public highways.

SEC. 3049. Whenever any city or town has been surveyed and platted and a plat thereof showing the roads, streets and alleys has been filed in the office of the auditor of the county in which such city or town is located, such plat shall be deemed the official plat of such city, or town, and all roads, streets and alleys in such city or town as shown by such plat, be and the same are declared public highways: *Providing*, That nothing herein shall apply to any part of a city or town that has been vacated according to law.

## CHAPTER CCXXXVIII.

### ELECTION LAW.

### QUALIFICATION OF ELECTORS, AND HEREIN OF RESIDENCE.

SECTION
3050. American male citizens over twenty-one years; American half breeds, further qualifications; males who have declared intentions, etc., etc.; officers and men connected with army and navy.
SECTION
3051. Employment does not affect residence.
3052. Idiots, insane and what convicts disfranchised.
3053. Absence from territory on certain business does not affect residence.
3054. Conviction of infamous crime construed.

SEC. 3050. All American male citizens, above the age of twenty-one years, and all American male half-breeds over that age, who have adopted the habits of the whites, and all other male inhabitants of this territory, above that age, who shall have declared on oath their intentions to become citizens, at least six months previous to the day of election, and shall have taken an oath to support the constitution of the United States, and the organic act of this territory, at least six months previous to the day of election, and who shall have resided six months in the territory, and thirty days in the county next preceding the day of election, and none other, shall be entitled to hold office or vote at any election in this territory: *Provided*, That no officer, soldier, seaman or marine, in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote at any election in this territory, by reason of being in service therein, unless said territory is, and has been for the period of six months, his permanent domicil: *Provided*, He was a citizen of this territory, at the time of his enlistment: *And provided further*, That no person belonging to the army or navy of the United States shall be elected to, or hold any civil office or appointment in this territory: *Providing*, That this provision shall not apply to officers of the army or navy on the retired list.

Sec. 3051. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this territory, or of the United States, or of the high seas; nor while a student of any seminary of learning, nor while kept at any almshouse or other asylum, nor while confined in any public prison, excepting when serving out a sentence in the penitentiary for an infamous crime.

Sec. 3052. No idiot, or insane person, or persons convicted of an infamous crime, shall be entitled to the privilege of an elector.

Sec. 3053. Absence from the territory, on business, shall not affect the question of residence of any person: *Provided*, The right to vote has not been claimed or exercised elsewhere.

Sec. 3054. A crime shall be deemed infamous which is punishable by death or imprisonment in the penitentiary.

## CHAPTER CCXXXIX.

### TIME OF HOLDING, AND MANNER OF CONDUCTING ELECTIONS.

SECTION
3055. Time of holding prescribed.
3056. Special election may be held.
3057. What vacancies to be supplied at general election.
3058. The governor to issue proclamation, when.
SECTION
3059. Auditors of senior counties to issue notice in joint districts.
3060. Notice of general or special elections; form.
3061. Road supervisors not included.

Sec. 3055. The election of legislative, district, county and precinct officers, in this territory, shall be held on the Tuesday following the first Monday of November, Anno Domini, eighteen hundred and eighty-two, and thereafter biennially, on the Tuesday next following the first Monday in November; and all elective, territorial, legislative, district, county, and precinct officers shall hereafter be elected at the times herein specified.

Sec. 3056. Special elections are such as are held to supply vacancies in any office, whether the same be filled by the vote of the qualified electors of the territory, or any district, county or township, and may be held at such times as may be designated by the proper officer.

Sec. 3057. All vacancies which are about to occur in an office, by the expiration of the full term thereof, shall be supplied at the general election.

Sec. 3058. It shall be the duty of the governor, at least sixty days before any general election, to issue his proclamation, designating the offices to be filled by the territory at large at such election, and to transmit a copy thereof to the county auditor of each county.

Sec. 3059. It shall be the duty of the county auditors of the senior counties in any joint council or representative district, to issue to the county or counties, composing said district, thirty days before any general election, notice designating the office to be filled at each election by said district.

SEC. 3060. It shall be the duty of each county auditor to give at least thirty days' notice of any general election, and at least fifteen days previous to any special election, by posting or causing to be posted up at each place of holding election in the county, a written or printed notice thereof; said notice to be, as circumstances will admit, as follows: Notice is hereby given that on the—— day of —— next, at——, in the——district or precinct of——in the county of——, an election will be held for territorial, county, town or district officers (naming the offices to be filled, as the case may be,) which election will be opened at nine o'clock in the morning, and will continue until six o'clock in the afternoon of the same day. Dated this——day of——, A. D., 18——

A B, County Auditor.

SEC. 3061. Nothing in this chapter shall be so construed as to authorize the election of road supervisor, under the provisions of the chapter.

## CHAPTER CCXL.

### RESIGNATIONS AND VACANCIES AND SUPPLYING VACANCIES.

SECTION
3062. To whom officers shall resign.
3063. What shall create vacancies.
3064. Special elections may be ordered, when.
SECTION
3065. Vacancies in county or precinct offices.
3066. Officer filling vacancy only serves out unexpired term.

SEC. 3062. Resignations shall be made as follows: By the territorial officers and members of the legislative assembly, to the governor; by all county officers, to the county commissioners of their respective counties; by all other officers, holding their offices by appointment, to the body, board or officer that appointed them.

### VACANCIES.

SEC. 3063. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such officer. First, the death of the incumbent; second, his resignation; third, his removal; fourth, his ceasing to be an inhabitant of the district, county, town or village for which he shall have been elected or appointed, or within which the duties of his office are to be discharged; fifth, his conviction of an infamous crime, or of any offense involving a violation of his official oath; sixth, his refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law; seventh, the decision of a competent tribunal declaring void his election or appointment; eighth, whenever a judgment shall be obtained against such officer for breach of the condition of his official bond.

### SUPPLYING VACANCIES.

SEC. 3064. Whenever a special election is necessary to fill a vacancy in the office of delegate to congress, territorial council, house of representatives or prosecuting attorney, the governor shall issue his proclamation ordering such election, in like manner as is provided in regard to general elections, and designating also the time at which it is to be held; and the county auditor of each county in which such election is to be held, shall give notice thereof, as required in section 3060.

SEC. 3065. Whenever a vacancy occurs in any county or precinct office, except when otherwise provided by law, it shall be filled by appointment by the board of county commissioners at the first regular or special session of their board after that vacancy occurs: *Provided*, That if the commissioners be not apprised of the vacancy at their first session after the vacancy occurs, it may be filled at any subsequent session of their board.

Sec. 3066. Whenever any officer resigns his office before the expiration of his term, or the office becomes vacant from any other cause, and at a subsequent special election such vacancy is filled, the person so elected to fill such vacancy shall not hold the office any longer than the original incumbent who resigned would have been entitled to hold the office.

## CHAPTER CCXLI.

### PLACES OF HOLDING ELECTIONS—INSPECTORS, JUDGES AND CLERKS OF ELECTION.

SECTION
3067. Precincts to be fixed by county commissioners, when.
3068. Inspector and judges to be appointed by county commissioners.
3069. Inspector and judges to appoint two clerks.
3070-1-2. Oath of officers.
SECTION
3073. County auditor to make copy of each of said oaths.
3074. Oath to be certified by person administering same.
3075. Inspector to be chairman; may administer oaths and fill vacancies.

Sec. 3067. It shall be the duty of the county commissioners to divide their respective counties into precincts in such manner as they may deem most convenient for the population, and appoint a place for holding the elections therein.

Sec. 3068. It shall be the duty of the county commissioners, at their regular session, held previous to the day of holding the general election, to appoint for each precinct from the qualified electors of said precinct, one inspector and two judges, who shall constitute a board of judges of election. In case said board be not appointed for any precinct, by the board of county commissioners, as specified in this section, or those appointed in accordance with this section shall not be present at the place designated by the county commissioners in a precinct for holding the polls, at the hour to open the polls, the electors present may appoint a board of judges for such precinct.

Sec. 3069. The inspector and judges for each precinct shall, before the time of opening the polls, appoint two suitable persons to act as clerks, who shall be qualified electors.

Sec. 3070. The inspector, judges and clerks aforesaid shall, before entering upon the duties of their offices, severally take and subscribe the oath or affirmation hereinafter directed, which shall be administered to them by any person authorized to administer oaths; but if no such person be present, the inspector shall administer the same to the judges and clerks, and one of the judges shall administer the oath to the inspector.

Sec. 3071. The following shall be the form of the oath or affirmation, to be taken by each inspector: I, A B, do swear (or affirm) that I will duly attend to the ensuing election, during the continuance thereof, as an inspector, and that I will not receive any ticket or vote from any person other than such as I shall firmly believe to be, according to the provisions of the laws of this territory, entitled to vote at such election, without requiring such evidence of the right to vote as is directed by law; nor will I vexatiously delay, or refuse to receive any vote from any person whom I shall believe to be entitled to vote as aforesaid; but that I will in all things truly, impartially and faithfully perform my duty therein, to the best of my judgment and abilities, and that I am not, directly nor indirectly, interested in any bet, or wager on the result of this election.

SEC. 3072 The following shall be the oath or affirmation of each judge: We, A B, do —— that we will as judges duly attend the ensuing election, during the continuance thereof, and faithfully assist the inspector in carrying on the same; that we will not give our consent that any vote or ticket shall be received from any person, other than such as we firmly believe to be, according to the law of the territory, entitled to vote at such election; and that we will make a true and perfect return of the said election, and will in all things truly, impartially and faithfully perform our duty respecting the same, to the best of our judgment and abilities; and that we are not directly nor indirectly interested in any bet or wager on the result of this election.

SEC. 3073. The following shall be the form of the oath to be taken by the clerks, viz: We, and each of us, A B, do —— that will impartially and truly write down the name of each elector who shall vote at the ensuing election, and also the name of the county and precinct wherein such elector resides; and carefully and truly write down the number of votes that shall be given for each candidate at the election as often as his name shall be read to us by the inspector thereof, and in all things truly and faithfully perform our duty respecting the same, to the best of our judgment and abilities, and that we are not directly nor indirectly interested in any bet or wager on the result of this election.

SEC. 3074. It shall be the duty of the county auditor to make out one copy of each of the said oaths or affirmations, for each election precinct, which shall be severally subscribed by the inspector, judges and clerks, and the said oaths or affirmations shall be certified under the hand of the person by whom they shall be administered, and the said oaths or affirmations shall be placed with the election returns to be returned to the county auditor.

SEC. 3075. The inspector shall be chairman of the board and after its organization shall have power to administer all necessary oaths which may be required in the progress of the election. He shall also have power to fill any vacancy that may occur in the board of judges or by absence or refusal to serve of either of the clerks after the polls shall have been opened.

## CHAPTER CCXLII.

### OPENING OF THE POLLS—VOTING AND CHALLENGES.

SECTION
3076. Polls shall be opened at 9 A. M. and closed at 6 P. M.
3077. Proclamation to be made of polls being open.
3078. Auditor to furnish inspector with poll books.
3079. Voting shall be by ballot, and receiving same,
3080. Each clerk to enter name of voter.
3081. Challenging of person offering to vote.
3082. Duty of board when party is challenged.
3083. Challenged party refusing to swear or judges not satisfied, vote to be rejected.
3084. Further proceedings if challenged party insists.
3085. When party challenging fails to traverse, vote admitted.
3086. Challenge, because convicted of infamous crime.
3087. On closing polls, proclamation to be made.

SEC. 3076. At all elections the polls shall be opened at nine o'clock in the morning and shall continue open without recess until six o'clock in the evening, at which time the judges shall close the polls: *Provided*, That in sparsely settled precincts, whenever a sufficient number of qualified electors to constitute a board of election are not present at nine o'clock on the morning of the day of the election, it shall be lawful to open the polls as soon thereafter as a sufficient number are present.

Sec. 3077. The board of judges, before they commence receiving ballots, shall cause it to be proclaimed aloud at the place of voting, that the polls are now open.

Sec. 3078. It shall be the duty of the auditors of the several counties to furnish the inspectors of each election precinct, with two poll books, at least five days before the time of holding the election.

Sec. 3079. The voting shall be by ballot. The ballot shall be a paper ticket, containing the names of the persons for whom the electors intend to vote, and designating the office to which such person so named is intended by him to be chosen. Whenever any person offers to vote the inspector shall pronounce his name in an audible voice, and if there be no objections to the qualifications of such person, as an elector, he shall receive his ballot and, in the presence of the judges, put the same without being opened or examined into the ballot box.

Sec. 3080. The name of each elector whose ballot has been thus received, shall be immediately entered by each clerk in the column of his poll list, headed "names of voters," numbering each name in the additional column, as it is taken down, so that it may be seen at any time whether the two lists agree. Whenever the board of election rejects a ballot it must at the time of such rejection cause to be made thereon and signed by a majority of the board an endorsement of such rejection and of the cause thereof. All rejected ballots must be preserved and returned in the same manner as other ballots. Whenever a question arises in the board as to the legality of a ballot or any part thereof, and the board decide in favor of the legality, such action together with a concise statement of the facts that gave rise to the objection, must be endorsed upon the ballot and signed by a majority of the board.

Sec. 3081. Any person offering to vote may be challenged as unqualified by the inspector or either of the judges, or by any legal voter, and it shall in all cases be the duty of the inspector and each of the judges, to challenge any person offering to vote, whom they shall know or suspect not to be duly qualified as an elector.

Sec. 3082. When any person offering to vote is challenged, it shall be the duty of the judges to declare to him the qualifications of an elector, and the inspector or one of the judges shall tender him the following oath: "You do swear (or affirm) that you will truly and fully answer all questions as shall be put to you, touching your place of residence, and qualifications as an elector." The inspector or one of the judges shall then proceed to question the person challenged in relation to his name, his then place of residence, how long he has resided in the precinct, and county, where his last place of residence was, also as to his citizenship, and whether a native or naturalized citizen, and if the latter, when, where, in what county or before what officer he was naturalized, and all such other questions as shall tend to test his qualifications as to citizenship and the right to vote.

Sec. 3083. If any person shall refuse to take the aforesaid oath, when so tendered, or to answer any and all pertinent questions as to qualifications, his vote shall be rejected; and if the board of judges are satisfied from answers as aforesaid, that such person is not a legal voter, they shall reject his vote.

Sec. 3084. If such person shall insist that he is entitled to vote, and the board of judges find no cause to reject his vote under the preliminary examination, and the challenge shall not be withdrawn, he shall not be entitled to vote unless he takes the following oath, to be administered by the inspector or one of the judges, viz: "You do swear (or affirm, as the case may be) that you are a citizen of the United States (or that you have declared your intention as citizen six months previous) that you have resided in this territory six months next preceding this election, and in this county thirty days, and that you have not voted this day;" and in case the person offering to vote produces a certified transcript of the record of a court of competent jurisdiction admitting him to citizenship, or certificate of declaration of citizenship duly attested by the clerk thereof, as evidence of his right to vote and the person so producing the same is unknown to the board of judges, he shall make oath that he is the person therein named.

Sec. 3085. If any person shall take the oath, as tendered to him by the inspector, or judges, and no evidence is offered to traverse the same by the officer or party challenging, he shall be admitted to vote; but if he refuses to take the oath or affirmation so tendered him, his vote shall be rejected.

Sec. 3086. If the vote of any person be challenged, on the ground that he has been convicted of an infamous crime, and shall remain unpardoned or disfranchised by any court of a competent jurisdiction, he shall not be required to answer any questions respecting such alleged conviction, and in the absence of any authenticated record of such fact, it may be competent for two disinterested witnesses upon oath, to prove the same.

Sec. 3087. When the polls are closed, proclamation thereof shall be made at the place of voting and no votes shall be afterwards received.

## CHAPTER CCXLIII.

### COUNTING VOTES—DECLARING THE RESULT AND CERTIFICATES.

Section
3088. Judges to count votes on afternoon of election day
3089-90 Method of counting, duty of clerk, etc.
3091. What tickets shall be rejected; no ticket to be rejected if vote can be ascertained.
3092. Returns, how made up and sent to county auditor.
2093. Certificate, what to contain; returns.
3094. Returns to be delivered to county auditor.
3094. Returns not to be rejected for want of form, etc.
3095. County auditor to canvass returns; how.
3096. Party receiving highest number of votes to be declared elected.
3097. Ties, how decided.
3098. Probate judge to canvass election of county auditor.
3099. Duty of county auditor in election of district officers.
3099. Senior county auditor to give certificate to district officer.
3100. Transmitting election returns to secretary of territory.
3101. County auditor to transmit abstract of votes for officers to secretary of territory.
3102. Defective returns, not cause for witholding certificate.
3103. Election returns transmitted by mail to be registered.
3104. In case of a tie vote, a special election shall be ordered.

Sec. 3088. As soon as the polls are closed on the afternoon of the day of election, the judges shall open the ballot box and commence counting the votes, and in no case shall the box be removed from the room in which any election may be held until all the ballots are counted.

Sec. 3089. The counting of ballots shall in all cases be public. The ballots shall be taken out carefully, one by one, by the inspector or one of the judges, who shall open them and read aloud the name of each person contained therein and the office for which every such person is voted for.

Sec. 3090. Each clerk shall write down each office to be filled, and the name of each person voted for, for such office, and shall keep the number of votes by tallies as they are read aloud by the inspector or judge. The counting of the votes shall be continued without adjournment until all are counted.

Sec. 3091. If two tickets are found folded together they shall both be rejected, and if more persons are designated on any ticket for any office than are to be elected to such office, such part of the ticket shall not be counted for any of them, but no ticket shall be lost for want of form, or mistake in initials of names, if the board of judges can determine to their satisfaction the person voted for, and the office intended.

Sec. 3092. It shall be the duty of the inspector, or one of the judges, to string the ballots at the time of counting, and after all the ballots have been counted and strung, it shall be the duty of the inspector to place them in a sealed envelope, and write thereon ballots of — precinct, — county, Washington territory, of election held this — day of—, 18—," and send said sealed envelope to the auditor of the county, where said election is held, who shall keep said sealed envelope containing said ballots, unopened for the period of six months, to be used only as evidence in case or cases of contest when called for, at the end of which time it shall be the duty of said county auditor to burn said ballots in presence of two other county officers.

Sec. 3093. As soon as all the votes are read off and counted, a certificate shall be drawn up on each of the papers, containing the poll list and tallies, or attached thereto, stating the number of votes each person voted for has received, and designating the office to fill which he was voted for, which number shall be written in words at full length. Each certificate shall be signed by the clerks, the judges and inspector; one of said certificates, with ballots, poll lists, and tally paper, oath of inspector, judges and clerks shall be sealed up by the inspector and endorsed "Election returns", and be directed or sent by the inspector to the county auditor of the county in which the election is to be held.

Sec. 3094. The said package shall be delivered to the county auditor by one of the judges or clerks of the election, in person, or may be sent by registered mail. If sent by mail, it shall be mailed by one of the judges. The other of said certificates, with poll list and tally papers, oaths of judges, inspector and clerks, shall be retained by the inspector and preserved by him at least six months. Tally papers, poll list or certificate returned from any election, shall not be set aside, nor rejected for want of form, nor on account of not being strictly in accordance with the directions of this chapter, if the same be satisfactorily understood.

Sec. 3095. On the tenth day after the day of each election, or as soon as he shall have received the returns from each precinct of the county, if he receive them within that time, it shall be the duty of the county auditor to notify two county officers, one of whom shall be a judge of probate, to be present at the office of said county auditor on a day named by said county auditor for the purpose of canvassing the votes cast at election in the different precincts of the county and it shall be the duty of the judge of probate present, as one of the canvassers of said votes, to administer the following oath or affirmation to the county auditor having in his possession the election returns of said county. "I do solemnly swear (or affirm) that the returns purporting to be the election returns of the several precincts in this county, have been in no wise altered by additions, or erasures, and that they are the same as when I received them, so help me God." The said oath or affirmation to be in writing and signed by the county auditor and certified to by the aforesaid judge of probate, and placed on file in said auditor's office, among the papers appertaining to said election; and then the said auditor, with the assistance of two county officers aforesaid, shall proceed to count the votes of said county or precincts, a statement of which shall be drawn up and signed by them. And it shall be deemed a misdemeanor in the county auditor, if he shall neglect or refuse to return the total number of votes as counted, if such votes can be with reasonable certainty ascertained.

SEC. 3096. The person having the highest number of votes given for each office, to be filled by the voters of a single county, or of a precinct shall be declared duly elected, and the county auditor shall immediately notify him of his election, and it shall be the duty of said auditor to make out and deliver to any person so notified, a certificate of election, upon his making application to the auditor.

SEC. 3097. If the requisite number of county or precinct officers shall not be elected by reason of two or more persons having an equal and highest numbers of votes for one and the same office, the county auditor shall give notice to the several persons so having the highest and an equal number of votes, to attend at the office of the auditor at the time to be appointed by said auditor, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected, and the said auditor shall make out and deliver to the person thus declared duly elected, a certificate of his election as hereinbefore provided.

SEC. 3098. When a county auditor is to be elected, the probate judge shall examine the returns, as soon as they are filed, and issue to the person chosen a certificate of election in the form prescribed in the preceding section.

SEC. 3099. When there are officers voted for, who are to be chosen by the electors of a district composed of two or more counties, it shall be the duty of each of the county auditors of the counties composing such district, immediately after making out the statement specified in section 3095, to extract therefrom so much as relates to the election of such officers, and to certify under his hand and the seal of the county, that such extract contains a full statement of all the votes given for district officer, as returned to him, and, without delay transmit the same to the county auditor of the senior of the counties composing such district. The said county auditor shall compare the returns, make up a statement of the vote of the district for such officers, and file the same together with the returns from the other counties, in like manner as is prescribed in section 3095 of this chapter. He shall also make out and transmit to the secretary of the territory, such statement of the votes of the district, signed by him officially, and authenticated with the seal of the county, and shall furnish the person elected a certificate of election.

SEC. 3100. When there are other officers voted for who are chosen by the qualified voters of this territory, it shall be the duty of each county auditor, so soon as the statement of the vote of his county is made out, as required in section 3095 to copy therefrom so much as relates to the vote given for such officer, certify to the correctness thereof, under his hand, and the seal of the county, and transmit the same to the secretary of the territory, endorsing on the package the words "Election Returns." On the thirtieth day after the day of election, or as soon as the returns shall have been received, from all the counties of the territory, if received within that time, the secretary of the territory shall compare and estimate the vote, and make out and file in his office a statement thereof, a copy of which shall be transmitted to the governor. Upon this statement the commission or certificate shall issue.

Sec. 3101. That it shall be and is hereby made the duty of the county auditor in each county of this territory to immediately after making abstracts of the vote given in his county, at the general or special election for members of the legislature, county, territorial or district officers, or delegate to congress, to transmit by mail a certified copy of said abstract to the secretary of the territory, at the seat of government. It shall be the duty of the secretary of the territory to furnish uniform and proper blanks to each and every county auditor in the territory on which said county auditors shall make returns to the secretary's office. The county auditors shall make returns of all persons voted for territorial, district and precinct officers.

Sec. 3102. No certificate shall be withheld, on account of any defect or informality in the returns of any election, if it can with reasonable certainty be ascertained from such return what office is intended, and who is entitled to such certificate, nor shall any commission be withheld by the governor on account of any defect, or informality of any return made to the office of the secretary of the territory.

Sec. 3103. Whenever returns are required to be transmitted by one county auditor to another, or by the county auditor to the secretary of the territory, it shall be the duty of county auditors to deliver the same to some postmaster of the county at the postoffice, to be transmitted by registered mail.

Sec. 3104. If at any election to fill any district or legislative office two or more persons receive the highest and equal number of votes, it shall be declared that there is no choice and a special election to fill such office, shall be ordered by the proper officer.

## CHAPTER CCXLIII.

### OF CONTESTING ELECTIONS.

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SEC. 3105. Any elector of the proper county may contest the right of any person declared duly elected to an office to be exercised, in and for such county; and also any elector of a precinct may contest the right of any person declared duly elected to any office in, and for such precinct, for any of the following causes: (1.) For mal-conduct on the part of the board of judges or any member thereof. (2.) When the person whose right to office is contested, was not, at the time of election, eligible to such office. (3.) When the person whose right is contested shall have been previous to such election convicted of an infamous crime, by any court of competent jurisdiction, such conviction not having been reversed nor such person relieved from the legal infamy of such conviction. (4.) When the person whose right is contested has given to any elector or inspector, judge or clerk of the election, any bribe or reward, or shall have offered any such bribe or reward for the purpose of procuring his election. (5.) On account of illegal votes.

SEC. 3106. No irregularity or improper conduct in the proceedings of the board of judges or any one of them shall be construed to amount to such mal conduct as to annul or set aside any election, unless the irregularity or improper conduct shall have been such as to procure the person whose right to the office may be contested, to be declared duly elected when he had not received the highest number of legal votes.

SEC. 3107. When any election held for an office exercised in and for a county is contested on account of any mal-conduct on the part of the board of judges of any precinct election, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts shall change the result as to such office, in the remaining vote of the county.

SEC. 3108. Nothing in the fifth ground of contest, specified in section 3105 shall be so construed as to authorize an election to be set aside on account of illegal votes, unless it shall appear that an amount of illegal votes has been given to the person whose right to the office is contested, which, if taken from him would reduce the number of his legal votes below the number of votes given to some other person, for the same office after deducting therefrom the illegal votes which may be shown to have been given to such other person.

SEC. 3109. No person shall be competent to contest an election unless he is a qualified elector of the district, county or precinct, as the case may be, in which the office is to be exercised.

SEC. 3110. When any such elector shall choose to contest the right of any person declared duly elected to such office, he shall within ten days after such person shall have been declared elected to such office, file with the clerk of the court for the district having jurisdiction, a written statement setting forth specifically: (1.) The name of the party contesting such election and that he is a qualified elector of the district, county or precinct, as the case may be, in which such election was held; (2.) The name of the person whose right to the office is contested; (3.) The office; (4.) The particular cause or causes of such contest, which statement shall be verified by the affidavit of the contesting party that the matters and things therein contained are true as he verily believes.

Sec. 3111. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that illegal votes were cast, which, if given to the person whose election is contested in the specified precinct or precincts, will, if taken from him reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of any illegal votes unless the party contesting such election shall deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes and by whom given, which he intends to prove on such trial and no testimony shall be received of any illegal votes, except such as are specified in such list.

Sec. 3112. No statement of the cause of contest shall be rejected, nor the proceedings thereon dismissed by any court before which such contest may be brought for trial, for want of form, if the particular cause or causes of contest shall be alleged with such certainty, as will sufficiently advise the defendant of the particular proceedings, or cause for which such election is contested.

Sec. 3113. Upon such statement being filed it shall be the duty of the clerk to inform the judge of the district court who may give notice and order a special term of said court, to be held at the usual place of holding said court, on some day to be named by him, not less than ten nor more than twenty days from the date of such notice, to hear and determine such contested election: *Providing*, That if no special term is called, such contest shall be determined at the first regular term of said court after such statement is filed.

Sec. 3114. The clerk of said court shall also at the time issue a citation, for the person whose right to the office is contested, to appear at the time and place specified in said notice, which citation shall be delivered to the sheriff, or constable, and be served upon the party in person, or if he cannot be found, by leaving a copy thereof at the house where he last resided.

Sec. 3115. The said clerk shall issue subpœnas for witnesses in such contested election, at the request of either party, which shall be served by the sheriff or constable, as other subpœnas, and the district court shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpœnaed to attend, if they fail to do so.

Sec. 3116. Said court shall meet at the time and place designated to determine such contested election, by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings, if the statement of the cause or causes of contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court shall pronounce judgment in the premises, either confirming or annulling and setting aside such election, according to the law and right of the case.

Sec. 3117. If in any such case it shall appear that another person than the one returned, has the highest number of legal votes, said court shall declare such person duly elected.

Sec. 3118. The judge, clerk, sheriff, or constable and witnesses, shall receive respectively the same fees from the party against whom judgment is given, as are allowed for similar service in the district court.

Sec. 3119. If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the court confirmed, judgment shall be rendered against the party contesting such election, for costs, in favor of the party whose election was contested.

Sec. 3120. If such election is annulled, and set aside, judgment for costs shall be rendered against the party whose election was contested, in favor of the party contesting the same.

Sec. 3121. Each party shall be liable for the costs created by himself, to the officers and witnesses entitled thereto, which may be collected in the same manner in which similar costs are collected, in the district court.

Sec. 3122. Either party, feeling himself aggrieved by the judgment of said court, may appeal therefrom to the supreme court, as in other cases of appeal thereto.

Sec. 3123. Whenever an election shall be annulled, and set aside, by the judgment of the district court, when no appeal has been taken therefrom within ten days, such certificate or commission, if any have been issued, shall be thereby rendered void.

### CONTESTING ELECTION OF PROSECUTING ATTORNEY.

Sec. 3124. In case of any contest in regard to any election to fill the office of district attorney, such contest shall be tried in like manner, by the district court.

### CONTESTING ELECTION OF MEMBERS OF LEGISLATURE.

Sec. 3125. The right of any person declared duly elected to a seat in the council, or house of representatives, may be contested by any qualified voter of the county or district to be represented by such councilman or representative.

Sec. 3126. The person contesting such election, shall, within thirty days after election, file with the clerk of the district court of the district in which the alleged cause, or causes of the contest originated, a concise statement of the grounds on which he intends to rely, verified by affidavits.

Sec. 3127. Immediately on the filing of such statement in the clerk's office, the said clerk shall issue a commission directed to two justices of the peace in the contestant's district, to meet at such time and place, as shall be specified in such commission, not less than twenty, nor more than thirty days from the time of issuing the same, for the purpose of taking depositions of such witnesses as the parties to such contest may wish to examine.

Sec. 3128. Written notice of such contest, specifying the time and place of taking depositions, and before whom to be taken, and a copy of the statement certified by the clerk of said court shall be delivered to the person whose election is contested, or if he cannot be found, it shall be left at the house where he last resided, by the sheriff of the county in which such person claims his residence, within ten days after such statement shall have been filed in the clerk's office.

SEC. 3129. The sheriff, into whose hands such notice and certified copy may come, shall make due service thereof, and shall return to the proper clerk, a certified copy of such notice, with the manner and time of service endorsed thereon, for which he shall be entitled to receive from the party contesting such election, the same fees for service and mileage, as are allowed in the district court for service of original writs.

SEC. 3130. Either of said justices of the peace shall have power, at any time, to issue subpœnas for witnesses, at the request of either party, to be served by the sheriff as other subpœnas, and such justices, when met at the time and place appointed to take such depositions, shall have the same power to issue attachments, and assess fines against witnesses, as is given to justices of the peace in the trial of suits instituted before them.

SEC. 3131. Said justices of the peace shall meet at the time and place appointed to take the depositions of witnesses produced by the parties, which shall be reduced to writing by said justices, and sworn to and subscribed by said witnesses respectively, and duly certified by said justices as depositions are in other cases, noting in the caption of each deposition by which party the witness was called.

SEC. 3132. Said justices may continue said examination from day to day, if the business shall require it, and when the same is closed they shall deliver the depositions taken before them, together with their said commissions, to the clerk of the district court by whom the same was issued.

SEC. 3133. If at any time, either of the said justices shall become unable to proceed in such examination, said clerk may supply the vacancy by designating any other justice of the peace of the district in the place of such justice.

SEC. 3134. The sheriff, for the service of such subpœnas, and the justice for issuing the same and taking the deposition, shall receive from the party at whose instance such services are performed, the same fees as are allowed them for similar service in other cases.

SEC. 3135. It shall be the duty of said clerk to seal up such depositions together with the original statement of the grounds of such contest, and the copy of notice served upon the party, whose right is contested, and the commission issued to the justices of the peace and transmit the same by mail to the secretary of the territory, endorsing thereon the names of the contesting parties, and the branch of the legislature before which such contest is to be tried.

SEC. 3136. It shall be the duty of the secretary of the territory to deliver the same unopened to the presiding officer of the house in which such contest is to be tried, on or before the second day of the session of the legislature, next after taking such depositions, and such presiding officer shall immediately give notice to said house that said papers are in his possession.

SEC. 3137. Each house of the legislature is the judge of the qualifications and election of its members, and shall try all contested elections of its members in such manner as it may direct.

SEC. 3138. At any time after notice of any contest shall be given and before the trial of such contested election before the proper branch of the legislature, it may be lawful for either party to such contest, to take depositions to be read on the trial thereof, in like manner and under the same rules as are allowed and required in the cases of depositions to be read on any trial pending in the district court, and such deposition when thus taken shall be sealed up by the officer taking the same and directed to the secretary of the territory, who shall keep the same unopened, and deliver them to the presiding officer of the house in which such contest is to be tried, to be disposed of by such officer as the depositions specified in section 3135.

SEC. 3139. Nothing contained in this chapter shall be so construed as to abridge the right of either branch of the legislature trying any contested election, from granting commissions to take testimony, or from sending for and examining before such branch any witnesses it may desire to hear on such trial.

## CHAPTER CCXLIV.

### MISCONDUCT AT ELECTIONS, COMPENSATION OF OFFICERS.

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SEC. 3140. No person shall in any way directly or indirectly, by menace or other corrupt means or device, (directly or indirectly), attempt to influence any person in giving or refusing to give his vote in any such election, or to deter or dissuade any person from giving his vote therein, or to disturb, hinder, persuade, threaten or intimidate any person from giving his vote therein, nor shall any person at any such election, knowingly and willfully make any false assertion or propagate any false report concerning any person who shall be a candidate thereat, which shall have a tendency to prevent his election, or with a view thereto, and if any person shall be guilty of any act forbidden or declared to be unlawful by this section, he shall be deemed and taken to be guilty of a misdemeanor and, on conviction thereof, shall be punished by fine or imprisonment, or both at the discretion of the court, before which such conviction shall be had: *Provided*, That in no case shall such fine exceed the sum of two hundred and fifty dollars, or such imprisonment the term of six months.

SEC. 3141. If any person shall furnish any elector wishing to vote at any election held pursuant to law who cannot read, with a ticket, such person informing or giving such elector to understand that it contains a name or names written or printed thereon, different from the name or names which are written or printed thereon, such person shall upon conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars.

SEC. 3142. If any person shall defraud any elector at any such election, by deceiving and causing him to vote for a different person for any office than such elector desired or intended to vote for, or shall fraudulently attempt to deceive and cause such elector thus to vote for a different person for any office than he intended and desired to vote for, such person upon conviction thereof shall be fined in any sum not less than fifty nor more than five hundred dollars.

Sec. 3143. Any person who shall fraudulently vote at any election to be held under any present or future law of this territory, who shall not be duly qualified to vote at the place where, and time when his vote is given or offered, knowing that he is not duly qualified, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or imprisonment not exceeding one year, or both at the discretion of the court before which such conviction is had.

Sec. 3144. If any person who shall have voted in any such election shall offer himself a second time as a voter in such election, he shall be deemed and taken to be guilty of a misdemeanor and on conviction thereof shall be punished by fine or imprisonment at hard labor, or both at the discretion of the court, before which such conviction shall be had. *Provided*, That in no case shall such fine exceed the sum of five hundred dollars, or such imprisonment the term of one year.

Sec. 3145. If any inspector, judge or clerk of election while acting as such, shall induce or attempt to induce any elector, either by menace or reward, or promise thereof, to vote differently from what such elector shall intend or desire to vote, such person so offending shall, upon conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars.

Sec. 3146. If any inspector, judge or clerk of any election shall, previous to putting the ballot of any elector in the ballot box, attempt to pry into, or find out, any name or names on such ballot, which shall have been handed in by said elector in a folded form, or if any inspector, judge or clerk of any election shall open, or suffer the folded ballot of any elector which has been handed in to the board of judges, by any elector, with a view to ascertain the name of any person, or persons for whom such elector shall have voted at any such election, or if any inspector, judge or clerk of an election, without the consent of the elector, shall disclose the name of any person or persons which such inspector, judge or clerk shall have fraudulently or illegally discovered to have been voted for by such elector at any election, every such inspector, judge or clerk of an election so offending, upon conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars.

Sec. 3147. If the secretary of the territory, or any inspector, judge, board of judges, board of county commissioners, judge of probate, clerk of the district court, county auditor, clerk of probate court or clerk of election on whom any duty is enjoined by this act, shall be guilty of any willful neglect of such duty, or of any fraudulent or corrupt conduct in the execution of any such duty, he or they so offending shall, on conviction thereof, be fined in any sum not exceeding two thousand dollars, to which may be added imprisonment in the county jail not exceeding one year.

Sec. 3148. If any candidate for office, in any election as hereafter mentioned, under the laws of this territory, or any other person, shall, directly or indirectly offer, promise, procure, confer or give any money, property, thing in action, victuals, drink, preferment, or other consideration or valuable thing, by way of fee, reward, gift or gratuity, for giving or refusing to give any vote in any election of any public officer, territory, county, or municipal whatever, or any person who shall carry voters to any polling place, by wagon, steamboat or otherwise, for the purpose of influencing their votes, such person shall be deemed and taken to be guilty of a misdemeanor, and on conviction thereof be punished by fine or imprisonment or both, at the discretion of the court, said fine not to exceed one thousand dollars, nor such imprisonment to exceed six months, and further, such person shall, on such conviction, and as part of the judgment of the court, be deprived of the right of suffrage, and such candidate for office be disqualified to hold any office to which he was elected at such election, and further, if any person shall directly or indirectly ask for, accept, receive or take any such bribe, or the promise thereof, by giving or refusing to give his vote in any such election, he shall be deemed guilty of a misdemeanor and punished with the like penalties as hereinbefore prescribed.

SEC. 3149. It is hereby made the duty of the secretary of the territory after the expiration of thirty days from and after each election for delegate to congress, to certify to the proper prosecuting attorneys any and all failures and omissions of the county auditors in their respective districts to comply with the provisions of chapter 243 in returning or certifying the returns or certificates of any such election, to the office of the secretary of the territory, and every such certificate from the secretary of the territory shall be sufficient presumptive evidence of any such failure or omission herein specified, on the part of the said county auditor, in any trial or indictment against him therefor.

SEC. 3150. It shall be the duty of the prosecuting attorney of each district, to present all violations of the election laws which may come to his knowledge, to the special consideration of the proper jury.

SEC. 3151. The fees of officers of election, shall be as follows: To the inspector, judges and clerks of an election, four dollars per day; the person carrying the returns to the county auditor shall be entitled to such mileage as the sheriffs are allowed. All expenses of registering packages shall be paid by the county.

SEC. 3152. That all district, county and precinct officers, elected at the first general election to be held in accordance with the provisions of this chapter, shall qualify, and be entitled to their several offices, within sixty days after the first Tuesday, following the first Monday in November of the year in which they are elected.

SEC. 3153. That the official term of all district, county and precinct officers shall be for the term of two years, or until their successors are duly elected and qualified; and their term of office shall begin the first Monday in January next, following the day of election, and continue two years, or until their successors are duly elected and qualified.

## CHAPTER CCXLV.

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## TITLE I.

### SUPERINTENDENT OF SCHOOLS.

SEC. 3154. A superintendent of public instruction shall be appointed by the governor, by and with the advice and consent of the legislative council, and shall enter upon the duties of his office on or before the twentieth day after his appointment, and shall hold his office for the term of two years or until his successor is appointed and qualified; and shall execute a bond in the penal sum of two thousand dollars, with two good and sufficient sureties, to be approved by the secretary of the territory, conditioned upon the faithful discharge of his or her official duties.

SEC. 3155. The superintendent shall have general supervision of public instruction, especially of the county and district school officers and the public schools of the territory, and shall report to the governor biennially, on or before the first day of September of the years in which the regular sessions of the legislature are held. The governor shall transmit said report to the legislature, and whenever it is ordered printed, a sufficient number of copies shall be delivered to the superintendent of public instruction to furnish two copies, to be deposited in the territorial library, and one copy to each county superintendent of common schools, to be held by him as public property, and delivered to his successor in office, and one copy to each local school officer within the territory. Said report shall contain a statement of the condition of the territorial university and public schools in the territory, full statistical tables, by counties, showing among other statistics the number of schools and the average attendance; the number attending private schools, the amount raised by county and district taxes, or from other sources of revenue for school purposes, the amount expended for salaries of teachers and for building and furnishing school houses, and the statement of the plans for the management and improvement of schools.

Sec. 3156. The superintendent of public instruction shall superintend the printing and transmitting of such blanks, forms, rules and regulations for the use and government of the public schools, school officers and teachers, as the board of education may authorize.

Sec. 3157. It shall be the duty of the superintendent of public instruction to travel in the different counties of the territory, where common schools are taught, so far as possible without neglecting his other official duties as superintendent of public instruction, during at least three months in each year, for the purpose of visiting schools, of consulting with county superintendents, and addressing public assemblies on subjects pertaining to public schools.

Sec. 3158. The superintendent of public instruction shall keep his office at some place where there is a post office, and he shall receive a salary of six hundred dollars per annum, which shall be paid quarterly, out of the territorial treasury. He shall also submit, quarterly, a statement of expenditures for traveling expenses, stationery, postage and other necessary expenses connected with his office, which shall be audited by the territorial auditor, who shall issue a warrant on the territorial treasurer for the payment of such amounts as shall be found to have been properly incurred: *Provided*, That said expenditures shall not exceed three hundred dollars in any one year.

Sec. 3159. The superintendent of public instruction shall, at least once a year, hold a territorial teachers' institute, over which he shall preside, at such time and place as may be determined upon, either by the institute or territorial board of education, and he shall, so far as practicable, aid in establishing county institutes.

Sec. 3160. The superintendent of public instruction shall be *ex-officio* president of the board of education.

Sec. 3161. Before entering upon the discharge of the duties of his office the superintendent shall subscribe, before an officer duly authorized to administer oaths, the following:

"I do solemnly swear (or affirm) that I will support the constitution of the United States, the organic act of the territory, and that I will faithfully discharge the duties of the office of territorial superintendent of schools according to law, and the best of my knowledge and ability; so help me God."

Subscribed and sworn to before me this — day of —, A. D., 18—; which, being duly attested, shall be filed with the secretary of the territory.

Sec. 3162. The superintendent shall, at the expiration of his term of office, deliver over, on demand, to his successor, all property, books, documents, maps, records, reports and other papers belonging to his office, or which may have been received by him for the use of his office.

## TITLE II.

### BOARD OF EDUCATION.

SEC. 3163. The governor shall appoint, by and with the advice and consent of the legislative council, one suitable person from each judicial district, who, together with the territorial superintendent, shall constitute the territorial board of education, who shall hold their offices for two years. They shall be notified of their appointment in the same manner as may be prescribed by law for giving notice to other territorial officers, and within twenty days after receiving such notice, shall qualify by taking a similar oath to that which is required by this act to be administered to the superintendent of public instruction. They shall serve until their successors are appointed and qualified.

SEC. 3164. The meetings of the board shall be held annually, at Olympia, on the first Monday of April.

SEC. 3165. Said board shall have power:

First. To adopt a uniform series of text-books throughout the territory, whenever they can secure the exchange of the books, now in use, for new ones, without cost or expense to the people, and the series of text-books so adopted shall not be changed until the expiration of five years from their adoption, unless the publishers of such books shall, after such adoption, cause the price thereof to be increased above the price charged by other publishers for books of corresponding grades, or shall thereafter publish the books of the series adopted of an inferior quality, either in material, workmanship or otherwise. Said board shall, before adopting any series of text books, give notice that they will examine all text-books submitted to them, and said examination shall be by a public discussion of the merits of said books, in open board; and the series of books, exhibiting the highest merits, shall be adopted as the series to be used in all the schools of this territory, and notice of the time when such competition shall take place, shall be published in one paper of general circulation in each judicial district, for a period of six weeks prior to the date when such public competition shall occur.

Second. To prescribe rules for the general government of the public schools that shall secure regularity of attendance, prevent truancy, secure efficiency and promote the true interests of the schools; they shall prepare, or cause to be prepared, blank forms for reports of teachers, directors, county superintendents and for other necessary purposes. The board shall have the general supervision of the territorial normal school whenever the same shall be established by law.

Third. To use a common seal.

Fourth. To order all printing that may be necessary to carry into effect the provisions of this act.

Fifth. To sit as a board of examination at their annual meetings and grant territorial certificates. A territorial certificate shall entitle the holder to teach in any public school for the period of three years, subject to be revoked for cause. The fees charged for territorial certificates shall be six dollars. The fees collected shall constitute a fund for paying the expenses of the board of education. The board of education may, at their discretion, grant, without examination, certificates to persons presenting authenticated diplomas, or certificates from other states, of the like grade and kind as those granted by the board of education for the territory: *Provided*, Such persons have been actually engaged in teaching three years.

SEC. 3166. It shall be the duty of the board of education to prepare, annually, a uniform series of questions to be used by the county boards of examination in the examination of teachers.

SEC. 3167. All certificates granted by the board of education may be revoked for immoral or unprofessional conduct.

SEC. 3168. All needed stationery for the use of, and any printing authorized by the board, as well as necessary traveling expenses of the members of the board, incurred in going to or returningfrom the place of meeting, shall be paid out of the territorial treasury, the accounts for the same to be presented by direction of the board, duly certified by the territorial superintendent, to the territorial auditor, to be first audited and allowed by him and then certified to the territorial treasurer for payment: *Provided*, The expenses of the whole board shall not exceed the sum of two hundred and fifty dollars in any one year.

SEC. 3169. Whenever any vacancy in the board shall occur, whether by death, removal, resignation or otherwise, the governor shall fill the vacancy by appointment. And all males and females over the age of twenty-one years shall be eligible to hold, or be elected to, any office under this act.

## TITLE III.

### COUNTY SUPERINTENDENT.

SEC. 3170. A county superintendent of common schools shall be elected in each county of the territory at each general election, who shall take the office on the second Monday in January next succeeding his election, and hold for two years, or until his successor is elected and qualified. He shall take the oath or affirmation of office, and shall give an official bond to the county in a sum to be fixed by the board of county commissioners. The county commissioners of each county shall fill any vacancy that may occur in the office of county superintendent until the next general election.

SEC. 3171. The county superintendent shall, on or before the first Monday in February and August of each year, apportion all school moneys to the school districts, in accordance with the provisions of this act. He shall certify to the several district clerks and to the county treasurer the amount so apportioned to the several districts; and the directors shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrants shall show for what purpose the money is required.

SEC. 3172. Each county superintendent shall have the power and it shall be his duty:

First. To visit each school in his county once a year.

Second. To distribute promptly all reports, laws, forms, circulars and instructions, which he may receive for the use of the schools and teachers.

Third. To report to the superintendent of public instruction, annually, on the first day of September, for the school year ending August thirty-first next preceding, giving the number of children of school age, the number of school houses, the number of school districts, the amount of money apportioned each year, the amount paid to teachers, the amount paid for school houses and furniture, and any other matter of interest connected with schools, or with the conduct and management of schools.

Fourth. To enforce the course of study adopted by the board of education.

Fifth. To enfore the rules and regulations required in the examination of teachers.

Sixth. To keep on file and preserve in his office the biennial report of the superintendent of public instruction.

Seventh. To keep in a good and well bound book, to be furnished by the county commissioners, a record of his official acts.

Eighth. To carefully preserve all reports of school officers and teachers and at the close of his term of office deliver to his successor all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county auditor.

Sec. 3173. If the county superintendent fails to make a full and correct report to the superintendent of public instruction, of all statements required to be made by law, he shall forfeit the sum of one hundred dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid, upon information from the superintendent of public instruction that such reports have not been made.

Sec. 3174. The county superintendent shall have power to administer oaths and affirmations to school directors, teachers and other persons, in all official matters connected with or relating to schools, but shall not make or collect any charge or fee for so doing.

Sec. 3175. The county superintendent shall have the power, and it shall be his duty to appoint directors and district clerk for any district which, from any cause, fails to elect at the regular time; to appoint directors and district clerks to fill vacancies, to appoint directors and district clerk for any new district: *Provided, however*, That when a new district is organized, such of the directors and district clerks of the old district as reside within the limits of the new one, shall be directors and district clerks of the new one, and the vacancies in the old district shall be filled by appointment; that the county superintendent shall have power to call a school meeting at the request of a majority of the legal voters, when in his opinion the interests of education require it: *Provided*, That said request for such school meeting be first laid before the directors of the district, and action thereon be refused by them.

Sec. 3176. It shall be the duty of the county superintendent to inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the county commissioners, and if such boundaries are not plainly described on such records, then it shall be his duty to furnish to said board of county commissioners accurate boundaries of all school districts; and he shall keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting or incorrectly described, he shall change, harmonize and describe them, and make a report of such action to the county commissioners; and on being ratified by the county commissioners, the boundaries and descriptions so made shall be legal boundaries and descriptions of the districts of the county. The county superintendent shall furnish the district clerks with descriptions of the boundaries of their respective districts.

Sec. 3177. Every county school superintendant shall receive a salary of forty dollars per annum, and when the number of scholars shall exceed five hundred (500) then he shall receive the sum of five dollars for each additional one hundred, and three dollars for each school visited during the year, together with mileage at ten cents per mile for going to and returning from said school, to be paid quarterly in the same manner as the salaries of other county officers, upon his certifying to the county commissioners that he has actually discharged the duties required.

Sec. 3178. Each county superintendent shall call to his assistance two persons holding the highest grade certificates in his county, and such persons, with the county superintendent, shall constitute a board for the examination of teachers. It shall be the duty of the county board of examination to be at the county seat on the first Wednesday of May and November, for the purpose of examining teachers; the superintendent shall give ten days' notice of the same, by posting up hand bills or otherwise; the superintendent shall also, at such time and place, transact such other business as properly appertains to his office. And any person or district applying on different days for the transaction of such business shall pay the superintendent a reasonable compensation for his trouble, not exceeding the sum of two dollars. A proper allowance shall be made out of the county treasury for the necessary books, stationery and postage of the county superintendent's office: *Provided*, That such persons called to the assistance of the county superintendent shall receive three dollars per day for the time actually employed, and mileage at the rate of ten cents per mile.

Sec. 3179. There shall be three grades of county certificates, first, second and third. Unless revoked for cause, a first grade certificate shall entitle the holder to teach for three years; second grade for two years, and third grade for one year. Those holding first grade county certificates, and who shall have been actually engaged in teaching for three years, shall be eligible to examination for first grade territorial certificates: *Provided*, That the county superintendent may grant permits to such persons who may desire to teach in his county, who were not residents of the county, or who were unavoidably absent from the meeting of the board of examination, and all permits so granted shall be good until the next meeting of the board.

## TITLE IV.

### SCHOOL DISTRICTS.

Sec. 3180. For the purpose of organizing a new district, or for the subdivision of, or change in the boundaries of, an old one, except as provided in section 3176, at least five heads of families must present a petition to the county superintendent, setting forth the boundaries of the new district asked for, or the change of the boundaries desired, with the reason for the same. The county superintendent shall, after having given notice to parties interested by posting notices, twenty days; in three of the most public places of the districts affected by said change, on the day fixed in said notice, proceed to hear and determine said petition, and make an order fixing said boundaries. Any person interested may, within twenty days, appeal from said order to the board of county commissoners at the next regular term thereof, and the board of county commissioners shall be duly notified of such action, and if no appeal shall have been made, they shall confirm said order, as of course. In case of appeal, the commissioners may affirm, reverse, or modify said order of the superintendent. Any party aggrieved may, within twenty days after such order, complain to the board of county commissioners of hardship in such order. In any case of alleged hardship any head of a family, parent or guardian may make a statement of the facts to the board of county commissioners, and, if in the judgment of the board, good cause be shown for transfer he may be transferred to another district.

Sec. 3181. No new district formed by the subdivision of an old one, shall be entitled to any share of the public money belonging to the old district, until a school has been actually commenced in such new district; and unless within eight months from the action of the county commissioners, a school is opened, the action making a new district shall be void, and all elections or appointments of directors made in consequence of such action, and all rights and office of the parties so elected or appointed, shall cease and determine; and all taxes which may have been levied in such old district, shall be valid and binding upon the real and personal property of the new district, and shall be collected and paid into the school fund of the district.

Sec. 3182. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district, after the payment of all outstanding debts at the time when school was actually commenced in such new district, and the county superintendent shall divide and apportion such remaining moneys, and such as may afterwards be apportioned, to the old district according to the number of school children resident in each district, for which purpose he may order a census to be taken.

Sec. 3183. Whenever a district is formed, lying in two adjoining counties, the clerk of the district shall report to each county superintendent the number of children in the district residing in his county. In the same manner the directors and teachers shall make a distinct and separate report of all school statistics, and a teacher's certificate granted by the county superintendent of one county shall be valid for both.

Sec. 3284. No school district shall be entitled to receive any apportionment of county school moneys unless the teachers employed in the schools of such district shall hold legal certificates of fitness for the occupation of teaching, in full force and effect.

Sec. 3185. No school district shall be entitled to receive any apportionment of county school moneys which shall not have maintained public school for at least three months, during the preceding year: *Provided*, That any new district, formed by the division of an old one, shall be entitled to its just share of school moneys where the time that school was maintained in the old district before division, and in the new one after division, shall be equal to at least three months.

Sec. 3186. Districts having less than fifteen scholars between the ages of four and twenty-one years, shall be exempted from the requirements of the preceding section, and may, by organizing and reporting to the superintendent according to law, draw their school money, without being required to comply with the provisions of the school law, any further than the said organization, necessary report and regular enumeration of children are concerned; and in such district, two legal voters shall constitute a quorum to do business; *Provided*, That no warrant shall be drawn on the county treasurer for any money except for the payment of teachers, and if no school be kept in any such district during the period of two years, for at least three months, the money so apportioned to the district shall revert to the general school fund of the county.

## TITLE V.

### SCHOOL DIRECTORS.

SEC. 3187. The board of directors of each school district shall have custody of all school property belonging to the district, and shall have power, in the name of the district, or in their own names, as directors of the district, to convey by deed all the interest of their district in or to any school house or lot directed to be sold by vote of the district, and all conveyances of real estate made to the district, or to the directors thereof, shall be made to the board of directors of the district and to their successors in office; said board in the name of the district shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

SEC. 3188. An annual school meeting for the election of school directors and district clerk shall be held in each district on the first Saturday in November of each year, at the district school house if there be one; and if there be none, at a place to be designated by the board of directors. The directors shall post written or printed notices thereof, specifying the day, time and place of meeting, in at least three public places in the district, one of which shall be the school house or other place of meeting, at least six days previous to the time of meeting. All elections shall be by ballot, and the directors shall have power to determine the hours in which the ballot box shall be kept open, having given due notice thereof in the posted notices of election. Every inhabitant, male or female, over the age of twenty-one years, who shall have resided in the school district for three months immediately preceding any district meeting, and who shall have paid or be liable to pay any tax, except poll or road tax, in said district, shall be a legal voter at any school meeting, and no other person shall be allowed to vote. Any person offering to vote may be challenged by any legally qualified elector of the district and the chairman of the board of directors shall thereupon administer to the person challenged an oath, in substance as follows: "You do swear (or affirm) that you are a citizen of the United States or have declared your intention to become such; that you are twenty-one years of age, according to the best of your information and belief; that you have resided in this district ninety days next preceding this election, and that you are a taxable resident of this school district, exclusive of road or poll tax, and that you have not before voted this day." If he shall refuse to take the oath his vote shall be rejected. And any person guilty of illegal voting shall be punished as provided in the general election law of this territory. The directors shall be the judges and inspectors of the election, and if they are not present at the time of opening the polls, then the electors present may appoint the officers of the election. A poll and tally list shall be kept by the clerk of the board of directors; and with the exceptions mentioned in this section the election shall be conducted as far as practicable in the form and manner of the general election. Any one of the old directors shall have power to administer to any director elect the oath of office, and the clerk of the election shall issue the certificate of election to any director elect, who shall forward it, with the oath attached or endorsed thereon, to the county superintendent of public schools.

Sec. 3189. In all organized districts in which elections have been previously held one director shall be elected for the term of three years, and if any vacancies are to be filled, a sufficient number to fill them for the unexpired term; and the ballot shall specify the respective terms for which each director is to be elected. In new districts, acting under directors appointed by the county superintendent, three directors shall be elected for one, two and three years respectively. Directors elect shall take office immediately after qualifying and shall hold office until their successors are elected and qualified. Any director elect who shall fail to qualify within ten days after being elected, shall forfeit all right to the office, and the county superintendent shall appoint to fill the vacancy until the next annual school meeting.

Sec. 3190. Whenever a new district is formed by order of the board of county commissioners, within thirty days thereafter a special school meeting may be called by notice of any three legal voters of said district, and such meeting shall be conducted in a manner and form prescribed in this act, for the annual school meeting for the election of directors. Such new district shall be considered organized whenever two of the directors shall have qualified, and the record of the district clerk shall be *prima facie* evidence of the legal organization of the district, and the district shall be designated by number.

Sec. 3191. Every board of directors, unless otherwise specially provided by law, shall have power and it shall be their duty:

First, To employ, and for sufficient cause dismiss teachers, mechanics and laborers; and to fix, alter, allow and order paid their salaries and compensation.

Second, To enforce the rules and general regulations of the territorial board of education for the government of schools, pupils and teachers, and to enforce the course of studies adopted by the board of education.

Third, To provide and pay for school furniture and apparatus and such other articles, materials and supplies, as may be necessary for the use of the school or for the use of the school board.

Fourth, To suspend or expel pupils from school, and in cities or towns to exclude from school all pupils under six years of age, when the interest of the school requires such exclusion.

Fifth, To rent, repair and furnish school houses.

Sixth, To build or remove school houses, purchase and sell school lots when the directors are directed by a vote of the district so to do.

Seventh, To purchase real and personal property in the name of the district, and to receive, lease and hold for their district any or all real or personal property.

Eighth, To provide books for the indigent children, on the written statement of the teacher that the parents of such children are unable to purchase them.

Ninth, To require all pupils to be furnished with such books as may have been adopted by the territorial board of education as a condition to membership to the school.

Tenth, To exclude from school and from school libraries, all books, papers, tracts or catechisms of an infidel, sectarian or partisan character.

SEC. 3192. Any board of directors shall be liable as directors in the name of the district, for any judgment against the district for any salary due any teacher, and for any debts legally due, contracted under the provisions of this act, and they shall pay such judgment or liability out of the school funds only, to the credit of the district.

SEC. 3193. Any board of directors shall have power to make arrangements with the directors of any adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school money due by apportionment to such children to the district in which they may attend school.

## TITLE VI.

### SCHOOL CLERKS.

SEC. 3194. It shall be the duty of the district clerk to record all proceedings of the annual meetings, or special school meetings, and to keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the district clerk must present his record book for public inspection, and shall make a statement of the financial condition of the district and of the action of the directors; and such record must always be open for public inspection.

SEC. 3195. It shall be the duty of the district clerk to take, annually, between the tenth and thirtieth of July, of each year, an exact census of all children and youth between the ages of four and twenty-one years of age, residing in the district, and shall specify the number and sex of such children, and the names of their parents or guardians. He shall state, specifically and separately, a census of all children under four years of age, and shall specify the number and sex of such children; but all children who may be absent from home, attending boarding schools or any public or private schools or seminaries of learning shall not be included by the school district clerk in the census list of the city, town or district where they may be attending such private institutions of learning. He shall make a full report thereof, on blanks furnished for that purpose, under oath, to the county superintendent, on or before the first day of August thereafter, and deliver a copy to the school directors.

SEC. 3196. The clerk of each district shall provide all school supplies authorized by this act, and shall keep the school house in repair, and shall keep an accurate record of all expenses incurred by him on account of the school, which account shall be audited by a majority of the board of directors and paid out of the district school fund.

SEC. 3197. It shall be the duty of every district clerk to report to the county superintendent, at the beginning of each term, the name of the teacher and the proposed length of the term.

## TITLE VII.

### DISTRICT MEETINGS.

SEC. 3198. District school meetings, annual or special, shall be held at such time as may be designated in the notice therefor, and in all districts where the number of youths and children between four and twenty-one years of age, equals or exceeds three hundred, and the polls kept open at least two hours.

## TITLE VIII.

### TEACHERS.

SEC. 3199. Every teacher employed in any public school shall make a report to the county superintendent at the close of each school term in the form and manner and on the blanks prescribed by the board of education. A duplicate of said report shall be furnished to the district clerk. Any teacher who shall end any school term before the close of the school year, shall make a report to the county superintendent immediately after the close of such term; and any teacher who may be teaching any school at the close of the school year, shall, in his or her annual report, include all statistics from the school register for the entire school year, notwithstanding any previous report for a part of the year. No board of directors shall draw any order or warrant, for the salary of any teacher for the last month of his or her services, until the reports herein required shall have been made and received.

SEC. 3200. Every teacher shall keep a school register, in the manner provided therefor, and no board of directors shall draw any warrant for the salary of any teacher for the last month of his or her services in school, at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and statistics entered, or until by personal examination, they shall have satisfied themselves that it has been done. Teachers shall faithfully enforce in school the course of study and the regulations prescribed by law; and if any teacher shall willfully refuse, or neglect to comply with such regulations, then the board of directors shall be authorized to withhold any warrant for salary due, until such teacher shall comply therewith. No teacher shall be entitled to draw for salary on school moneys unless such teachers shall be employed by a majority of the directors, nor unless the holder of a legal teacher's certificate or permit in full force and effect.

SEC. 3201. In every contract, whether written or verbal, between any teacher and board of directors, a school month shall be construed to be twenty school days, or four weeks of five days each, and no teacher shall be required to teach school on Saturdays, the first day of January, Christmas day, the fourth of July, or any other legal holiday, and no deduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught.

SEC. 3202. Every teacher shall have power to hold every pupil to a strict accountability in school, for any disorderly conduct on the way to or from school, or on the grounds of the school, or during intermission or recess; to suspend from school any pupil for good cause: *Provided*, That such suspension shall be reported to the directors as soon as practicable, and their decision shall be final.

SEC. 3203. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice and patriotism; to teach them to avoid idleness, profanity and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties and dignity of American citizenship.

## TITLE IX.

### SCHOOLS.

SEC. 3204. Every school, not otherwise provided for by special law, shall be open for the admission of all between the age of five and twenty-one years, residing in that school district, and the board of directors shall have power to admit adults and children not residing in the district.

SEC. 3205. All schools shall be taught in the English language, and instruction shall be given in the following branches, viz: Reading, writing, orthography, arithmetic, geography, English grammar, physiology, and history of the United States. Attention shall be given during the entire course to the cultivation of manners, morals, to the laws of health, physical exercises, ventilation and temperature of the school room.

SEC. 3206. No books, tracts, papers, catechisms or other publications of a partisan, denominational character, shall be used or distributed in any school; neither shall any political, sectarian, denominational or infidel doctrine be taught therein; and any teacher who shall violate these provisions shall forfeit his permit or certificate for the period of one year.

SEC. 3207. The school days shall be six hours in length, exclusive of any intermission at noon, but any board of directors may fix as the school day, a less number of hours than six: *Provided*, That it be not less than four for any primary school under their charge, and any teacher may dismiss any or all scholars under eight years of age, after an attendance of four hours a day, exclusive of an intermission at noon. No teacher or scholar shall be allowed to attend school from any house in which smallpox, varioloid or scarlet fever, diphtheria, or any other contagious or loathsome disease is prevalent. No teacher or scholar shall be permitted to return to school from any house where the above mentioned diseases or any of them have prevailed until three weeks shall have elapsed from the beginning of convalescence of the patient. In case several individuals have been affected with such disease within the same house, the period of time must be reckoned from the beginning of convalescence of the last case.

SEC. 3208. All pupils who may attend public schools shall comply with the regulations established, in pursuance of law, for the government of such schools, shall pursue the required course of study, and shall submit to the authority of the teachers of such schools. Continued and willful disobedience, and open defiance of authority of the teachers, shall constitute good cause for expulsion from school. Any person who shall in any way cut, deface, or otherwise injure any school house, furniture, fence or out-building thereof, shall be liable to suspension and punishment, and the parents or guardian of such pupil shall be liable for damage, on complaint of the teacher or any director.

SEC. 3209. The school year shall begin on the first day of September, and end on the last day of August.

## TITLE X.

### SUPPORT OF SCHOOLS.

SEC. 3210. The principal of all moneys accruing to the territory from the sale of any lands, which have been, or which may hereafter be given by the congress of the United States for school purposes, shall constitute an irreducible fund, the interest accruing from which shall be annually divided among all the school districts in the territory, proportionally to the number of children in each between the ages of four and twenty-one years, for the support of common schools and for no other purpose whatever.

SEC. 3211. For the purpose of establishing and maintaining public schools, it shall be the duty of county commissioners of each county to levy an annual tax, not less than two nor more than six mills on the dollar on all taxable property within their respective counties, as shown by the assessment roll made by the county assessor for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect said tax in the same manner as the other taxes are collected, and the said money so collected shall be paid over to the county treasurer, to be drawn in the manner prescribed in this act. For the support of common schools, there shall be set apart by the county treasurer, all moneys paid into the county treasury arising from fines for a breach of any law regulating license for the sale of intoxicating liquors, or for keeping of bowling alleys, or billiard saloons, or of any penal laws of the territory.

SEC. 3212. It shall be the duty of the auditors of the several counties of the territory to make a report to the county superintendent of common schools within the counties, the first Monday in August of each year, of the school tax levied, and the assessed valuation of their counties for that year, and it shall be the duty of the clerk of the district court at the close of every term thereof, to report to the county superintendent of the county in which said term shall have been holden, whether or not any fines, and if any, what, with the date at which the same were paid to the county treasurer, and all officers mentioned in this act, who shall fail or neglect to perform any of the duties required by this act, shall be deemed guilty of misdemeanor, and upon conviction before any court having competent jurisdiction, shall be fined in any sum not less than twenty dollars and not more than one hundred dollars for each neglect, and such fine shall be paid into the county treasury for the benefit of common schools of said county.

## TITLE XI.

### UNION OR GRADED SCHOOLS.

SEC. 3213. Whenever the inhabitants of two or more school districts may wish to unite for the purpose of establishing a graded school, the clerks of said districts shall, upon a written application of five voters of their respective districts, call a meeting of the voters of such districts at some convenient place by posting up written notices in like manner as provided for calling district meetings, and if a majority of the voters of each of such districts shall vote to unite for the purpose herein stated, they shall at that meeting, or at an adjourned meeting, elect three directors and a clerk for such a union district.

SEC. 3214. The board of directors provided for in the preceding section shall, in all matters relating to graded schools, possess all the power, discharge all the duties and be governed by the laws herein provided for district directors.

SEC. 3215. The union district thus formed shall be entitled to an equitable share of the county school fund, to be drawn from the county treasury in proportion to the number of children attending such graded schools for each district.

## TITLE XII.

### GRADED SCHOOLS IN CORPORATED CITIES OR TOWNS.

SEC. 3216. That each incorporated city or town in this territory shall be comprised in one school district and under one board of school directors, and in all such cities or towns, where the enumeration of school children entitled to draw school money is three hundred or more, the directors shall be required to adopt the graded system of teaching in their schools: *Provided*, That nothing in this section shall be so construed as to prevent the extension of such city or town districts a reasonable distance outside the limits of such incorporated city or town: *And, provided further*, That the schools of such cities or towns may be graded in such manner as the directors thereof may deem best suited to the wants of such districts. But no language other than the English, and no mathematics higher than arithmetic, shall be taught in such graded schools.

SEC. 3217. The directors of incorporated city or town districts may in their discretion elect one city or town school superintendent in each district, who may be a teacher of the district, and who shall have the control or management of all the schools in his district subject to the concurrence of the board of directors.

SEC. 3218. It shall be the duty of the city or town superintendent to visit all the common schools as often as twice every month during school terms, and to see that all requirements of the school law and the board of directors are enforced.

SEC. 3219. The directors of any school district composed of any incorporated city or town shall, when in their opinion it is necessary, levy a special tax of not exceeding ten mills in any one year, for the purpose of building school houses, which tax shall be levied and collected as provided in the general school law: *Provided*, That no special school tax shall be levied or assessed in any district until the same shall have been submitted to the qualified voters of such districts as required by law and a majority of the votes cast shall be in favor of such tax.

SEC. 3220. The directors of such district may also have power to levy a special tax of not exceeding five mills in any one year for tuition purposes in their districts, as provided by law: *Provided*, That such tax shall be levied in accordance with the provisions of section 3233 of this chapter.

SEC. 3221. When two or more school districts in any town or city are united by the provisions of this act, all the directors of the districts so united shall act as directors of said new district, and shall have all the powers and authority conferred by the laws of this territory upon school directors, (and they may designate the person to act as clerk of said district) until the next annual school meeting in said district, at which time there shall be three directors and one clerk elected for said district, in the manner provided by law, who shall hold their respective offices as provided for officers of new districts.

SEC. 3222. Districts thus formed shall be entitled to their full share of public school fund moneys, to be drawn from the county treasury, in proportion to the school enumeration of such districts.

SEC. 3223. Directors failing to organize their districts as herein provided, shall within one hundred and twenty days after the passage of this act be deemed guilty of a misdemeanor and fined in any sum not exceeding five hundred dollars, provided they are supplied with sufficient money to so organize the same.

## TITLE XIII.

### SCHOOL OFFICERS.

SEC. 3224. When any school officer is superseded by election, or otherwise, he shall immediately deliver to his successor in office, all books, papers and moneys pertaining to his office, and every such officer who shall refuse to do so, or who shall willfully mutilate or destroy any such books or papers, or any part thereof, or who shall misapply any moneys intrusted to him by virtue of his office, shall be deemed guilty of a misdemeanor, and shall be punished by a fine in the discretion of the court, not to exceed one hundred dollars.

SEC. 3225. Every person elected or appointed to any office mentioned in this act shall, before entering upon the discharge of the duties thereof, take an oath to support the constitution of the United States, the organic act of the territory, and to promote the interests of education, and faithfully discharge the duties of his office according to the best of his abilities. In case such officer has a written appointment or commission, his oath shall be endorsed thereon, and sworn to, before any officer authorized to administer oaths. School officers are hereby authorized to administer all oaths appertaining to their respective offices without charge or fee.

SEC. 3226. No school director or other school officer shall be directly or indirectly interested in any contract that may be made by a board of which he is a member; any contract made in violation of this provision shall be null and void.

SEC. 3227. All fines and penalties, not otherwise provided for in this chapter, shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection.

SEC. 3228. Any parent, guardian, or other person, who shall upbraid, insult or abuse any teacher in the presence of the school, shall be deemed guilty of a misdemeanor, and liable to a fine of not less than ten dollars nor more than one hundred dollars.

SEC. 3229. Any person who shall willfully disturb any public school or any public school meeting shall be deemed guilty of a misdemeanor and liable to a fine of not less than ten nor more than one hundred dollars.

SEC. 3230. In case any district clerk shall fail to take the census provided for in this chapter at the proper time, and if, through such neglect the district shall fail to receive its apportionment of school moneys, said district clerk shall be individually liable to the district for the full amount so lost and it may be recovered in a suit brought by any citizen of such district in the name of, and for the benefit of such district.

SEC. 3231. All cases of disputes, in relation to school matters, not properly belonging to courts of justice may be referred first to the county school superintendent, and appealed to the territorial superintendent, whose decision shall be final.

## TITLE XIV.

### TEACHERS' INSTITUTES.

SEC. 3232. Each superintendent of the common schools of any county in this territory, containing ten or more organized districts, may hold annually a teachers' institute at such time as may be agreed upon between him and the territorial superintendent.

## TITLE XV.

### SPECIAL TAXES.

SEC. 3233. The board of directors of any district may, when in their judgment it is advisable, submit to the qualified school electors of the district the question whether a tax shall be raised to furnish additional school facilities for said district, or for building one or more school houses or for removing or building additions to one already built, or for the purchase of globes, maps, charts, books of reference and other appliances or apparatus for teaching, or for any or all of these purposes. Such election shall be called by posting notices in three public places in the district, for at least twenty days; said notices shall contain the time of, and place of holding the election, the amount of money proposed to be raised, and the purpose, or purposes, for which it is intended to be used. The directors shall act as judges to conduct the election, and it shall be, in all other respects, as nearly as practicable, in conformity with the general election law. At such elections the ballots shall contain the words "tax, yes," or "tax, no." If the majority of votes cast are "tax, yes," the officers of the election shall certify the fact to the district clerk, who shall, at once, proceed to copy from the assessment roll of the list of property liable to taxation, situated in, or owned by, residents of the district, and shall deliver the same to the board of directors, who may allow him a reasonable compensation therefor, out of the proceeds of said tax; said compensation not to be more than four dollars per day. The directors shall, upon receiving the roll, deduct ten per centum therefrom for anticipated delinquencies, and then dividing the sum voted, together with the estimated cost of assessing and collecting added thereto, by the remainder of the roll, ascertain the rate per cent. required, and the rate so ascertained (using the full per cent. on each one hundred dollars instead of the fraction) shall be, and is hereby, levied and assessed to, on or against the persons or property named or described in said roll, and it shall be a lien on all such property until the tax is paid, and the said tax if not paid within the time limited, by the next section for its payment, shall be recovered by suit in the same manner, and with the same costs, as delinquent territorial and county taxes: *Provided*, That there shall be but one tax levied in each year, under this section, and that the tax so levied shall not exceed ten mills on the dollar: *Provided further*, That not more than two meetings shall be held in any one year under the provisions of this section.

SEC. 3234. As soon as the rate of taxation has been determined, as provided in the last preceding section, the directors shall certify the same to the county auditor, who shall extend the same upon the general assessment roll of the county and certify the same to the county treasurer, who shall proceed to collect the tax in the same manner and at the same time and with the same power and authority to enforce payment of the same as in the case of county and territorial taxes. The county treasurer shall place any tax so collected to the credit of the district to which it belongs, and shall receive, as compensation for collecting the same such sum, not more two per cent. of the tax collected, as may be allowed by the county commissioners; such compensation to be paid from the amount of said district tax so collected: *Provided*, That such commission shall not be paid when a county treasurer receives salary in lieu of commission.

SEC. 3235. All school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school children between four and twenty-one years of age, as shown by the returns of the district clerk for the preceding year: *Provided*, That Indian children, who are not living under the guardianship of white persons or American citizens, shall not be included in the apportionment list, excepting those whose parents have severed their tribal relations, or own real estate in the district subject to taxation.

## TITLE XVI.

### COUNTY TREASURER.

SEC. 3236. It shall be the duty of the county treasurer of each county:

First. To receive and hold all school moneys, as a special deposit, and to keep a separate account of their disbursement to the school districts, which shall be entitled to receive them, according to the apportionment of the county superintendent of common schools.

Second. To notify the county superintendent of common schools of the amount of county school fund in the county treasury, whenever required, and to inform said superintendent of the amount of school money belonging to any other fund subject to apportionment.

Third. To pay the amount of the county school tax levied, and such other moneys paid into the school fund on the warrants of the directors, whenever such warrants are countersigned by the district clerk and properly endorsed by the holders.

Fourth. To make, annually, on the first of September of each year, a financial report for the last preceding school and fiscal year, ending with August thirty-first, to the county superintendent of common schools in such form as may be required by law.

## TITLE XVII.

### MISCELLANEOUS.

SEC. 3237. Whenever the word he or his occurs in this chapter, referring to either superintendents, directors or teachers, it shall be understood to mean also she or her.

Sec. 3238. Any series of text-books adopted by the board of education shall remain in use not less than five years.

Sec. 3239. Any teacher who shall maltreat or abuse any pupil, by administering any undue or severe punishment, shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars.

Sec. 3240. All applicants for certificates shall be examined in reading, writing, orthography, arithmetic, geography, English grammar, physiology, history of the United States, school law of the territory, and theory and practice of teaching

Sec. 3241. This section shall be known as the Washington school law, and no other title or reference shall be necessary.

## CHAPTER CCXLVI.

### SCOWS, BOATS, SKIFFS, CANOES AND OTHER WATER CRAFTS FOUND ADRIFT.

SECTION
3242. Owner of boats found adrift to be notified.
3243. How notice given, and what it shall contain.
3244. Where notice not given personally.
3245. Compensation to person taking up.

SECTION
3246. Disagreement of parties, how settled.
3247. Taker-up liable for use of boat, etc.
3247. When craft not claimed, to be sold; how.

Sec. 3242. Any person taking up any scow, boat, skiff, canoe, or other water craft, found adrift, and out of the custody of the owner, in any stream or body of water, within, or bordering upon this territory, shall forthwith notify the owner thereof, if to him known, or if upon reasonable inquiry he can ascertain the name and residence of the owner, and request such owner to pay all reasonable charges, and take such water craft away.

Sec. 3243. Such notice shall be given personally, or in writing; if in writing, it shall be served upon the owner, or may be sent by mail to the post office where such owner usually receives his letters. Such notice shall inform the party where the scow, boat, skiff, canoe, or other water craft was taken up, and where it may be found, and what amount the taker-up or finder demands for his charges.

Sec. 3244. In all cases where notice is not given personally, it shall be the duty of the taken-up to post up at the post office nearest the place where such scow, boat, skiff, canoe, or other water craft may be taken up, a written notice of the taking up of such water craft, which shall contain a description of the same, with the name, if any is painted thereon, also the place where taken up, the place where the property may be found, and the charge for taking the same up. If the taker-up is traveling upon such stream or body of water, such notice shall be posted up at the first post office he shall pass after the taking up; and in all cases, he shall at the time when, and place where, he posts up such notice, also mail a copy of such notice, directed to the post master of each post office on said stream or body of water, and within fifty miles of the place where such water craft is taken up.

Sec. 3245. Every person taking up any scow, boat, skiff, canoe, or other water craft, so found adrift, and giving the notice herein required, shall be entitled to receive from the owner claiming the property, a reasonable compensation for his time, services, expenses, and risk in taking up said property, and take notice of the same, to be settled by agreement between the parties. In case he has not, within ten days after the taking up, substantially complied with the provisions of this chapter in giving the notice, he shall be entitled to no compensation, but he shall be liable to all damages the owner may have suffered, and be also liable to the owner for the value of the use of said water craft, from the time of taking it up until the same is delivered to the owner.

Sec. 3246. In case the parties cannot agree on the amount to be paid the taker-up, or the ownership, and the sum claimed is less than one hundred dollars, the owner may file a complaint, setting out the facts, and the justice, on hearing, shall decide the same with a jury, or not, and in the same manner as is provided in ordinary civil actions before a justice of the peace. If the amount claimed by the taker up is more than one hundred dollars, the owner shall file his complaint in the district court of the county where the property is, and trial shall be had as in other civil actions; but if the taker-up claims more than one hundred dollars, and a less amount is awarded him, he shall be liable for all the costs in the district court; and in all cases where the taker-up shall recover a less amount than has been tendered him by the owner or claimant, previous to filing his complaint, he shall pay the costs before the justice or in the district court: *Provided*, That in all cases the owner, after filing his complaint before a justice of the peace, shall be entitled to the possession of such water craft, upon giving bond, with security to the satisfaction of the justice, in double the amount claimed by the taker-up. When the complaint is filed in the district court, the clerk thereof shall approve the security of the bond. The bond shall be conditioned to pay such costs as shall be awarded to the finder or taker-up of such scow, boat, skiff, canoe, or other water craft.

Sec. 3247. In case the taker-up shall use the scow, boat, skiff, canoe or other water craft, more than is necessary to put it into a place of safety, he shall be liable to the owner for such use, and for all damage; and in case it shall suffer injury from his neglect to take suitable care of it, he shall be liable to the owner for all damage. In case such water craft is of less value than one hundred dollars, and is not claimed within three months, the taker-up may apply to a justice of the peace of the precinct where the property is, who, upon being satisfied that due notice has been given, and that the owner cannot, with reasonable diligence be found, shall order the scow, boat, skiff, canoe, or other water craft to be sold, and after paying the taker-up such sum as he shall be entitled to, and the costs, the balance shall be paid the county treasurer as is provided in the case of the sale of estrays. In case the scow, boat, skiff, canoe, or other water craft, exceeds one hundred dollars, and is not claimed within six months, application shall be made to the district court of the county, and the same proceeding shall be thereupon had. All sales made under this section shall be conducted as sales of personal property on execution.

## CHAPTER CCXLVII.

### DRIFT SAW-LOGS AND OTHER TIMBER.

Section
3248. Person taking up saw logs, etc.; salvage.

Section
3248. Estray logs, etc., when not to be taken up

SECTION
3249. Not to be disposed of within a certain time.
3250. Owner, when entitled to his property.
SECTION
3251. Penalty for violation of this chapter.

SEC. 3248. Any person taking up any saw logs, hewn, or other timber of value, found adrift, and estrayed from the boom or fastening of the owner; and the said logs or timber shall be found upon any sound, bay, or river, within this territory, shall be entitled to one-fourth part or value thereof: *Provided*, That nothing herein shall be so construed as to make any person liable to pay for the taking up of any logs or timber, which he may have marked and turned loose for the purpose of driving; and notice of the same hath been duly given to the settlers in the vicinity, or on the river below. It shall not be lawful for any person in this territory to take up any estray saw logs, hewn or other timber of value, as provided for in the foregoing section, which may be found lodged on a bar, bank, or in a drift, or dam, so as the same may be stationery: *Provided*, The same has not been so lodged for fifteen or more days.

SEC. 3249. Any person taking up logs or timber of value, under the provisions of this chapter, shall not be at liberty to dispose thereof for the space of twenty-five days from the time the same be so taken up; and there being no owner found claiming said logs or timber, during said time.

SEC. 3250. The owner of any estray logs or timber that shall be taken up under the provisions of this chapter shall, upon proof of the same being his, and paying one-fourth of the value thereof to the taker-up, be entitled to his property.

SEC. 3251. Any person violating the provisions of this chapter, shall, upon proof thereof before any justice of the peace for this territory, be subject to a fine of not less than ten, nor over one hundred dollars; the same to be collected in the name of the territory and for the use of the county thereof: *Provided*, That this act shall not apply to Snake river in this territory.

## CHAPTER. CCXLVIII.

### UNCLAIMED PROPERTY, AND LOST MONEY OR GOODS.

SECTION
3252. Consignee to keep a description of property.
3253 Owner to be notified when property not consigned.
3254. Not taken away in twelve months may be sold
3255. Notice to be given before sale
3256. When property not taken within sixty days.
3257. Duty of justice upon certificate.
3258. Constable to sell such property.
3259. Constable's return of sale.
3260. Disposition of the proceeds of such sale.
3261. Duty of county treasurer.
SECTION
3262. Restitution to be made within five years.
3263. Moneys not claimed belong to county.
3264 Disposition of perishable property.
3265 Fees of justices and constables.
3266 Notice to be given of finding lost money or goods.
3267. When notice shall be advertised or posted.
3268. Owner appearing within one year to have restitution.
3269. If no owner appears, disposition of.
3270. Penalty of finder not giving notice.

SEC. 3252. Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him, a description of such property, with the date of reception thereof.

SEC. 3253. If such property shall not have been left with such consignee or bailee, for the purpose of being forwarded or disposed of according to directions received of such consignee or bailee, at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him, and deposited in a post office, of the reception of such property.

SEC. 3254. If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may at any time thereafter proceed to sell the same, in the manner provided in this chapter.

SEC. 3255. Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence, or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the territory; the last publication of such notice shall be at least eighteen days previous to the time of sale.

SEC. 3256. If the owner or person entitled to such property, shall not take the same away, and pay the charges thereon, after sixty days' notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown.

SEC. 3257. Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order, under his hand, that the property therein described be sold by any constable of the precinct where the same shall be, at public auction.

SEC. 3258. It shall be the duty of such constable receiving such inventory and order, to give ten days' notice of the sale, by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction, to the highest bidder, in the same manner as provided by law for sales under execution from justice's courts.

SEC. 3259. Upon completing the sale, the constable making the same shall endorse upon the order aforesaid, a return of his proceedings thereon, and return the same to the justice, together with the inventory, and the proceeds of sale, after deducting his fees.

SEC. 3260. From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a rateable proportion of each charge, if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person.

SEC. 3261. The county treasurer shall make an entry of the amount, received by him, and the time when received, and shall file in his office such statement, so delivered to him by the justice.

SEC. 3262. If the owner of the property sold, or his legal representatives, shall, at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him.

SEC. 3263. If the amount so deposited with any county treasurer shall not be claimed by the owner thereof, or his legal representatives, within the said five years, the same shall belong to the county, and shall be applied to the common school fund of said county.

SEC. 3264. Property of a perishable kind, and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof, the sale to be conducted, and the proceeds of the same to be applied in the manner before provided in this chapter: *Provided*, That any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in section six of this chapter.

SEC. 3265. The fees allowed to any justice of the peace, under the provisions of this chapter, shall be three dollars for each day's service; and to any constable the same fees as are allowed by law for sales upon an execution, and ten cents a folio for making an inventory of property.

### LOST MONEY AND GOODS.

SEC. 3266. If any person shall find any money or goods of the value of five dollars or more, and if the owner thereof be unknown, such person shall, within five days after finding such money or goods, give notice thereof in writing, to the clerk of the board of county commissioners of the county in which such property was found, and shall, also, within said five days, cause a notice thereof to be posted up in two public places in said county.

SEC. 3267. Every finder of lost goods of the value of ten dollars or more, shall, in addition to the requirements of the preceding section, within fifteen days after finding the same, cause notice thereof to be published in a newspaper printed in the county, if there be one published therein, and if there be none, then such notice shall be posted up in three of the most public places in the county; and if no person shall appear to claim the same, who may be entitled thereto, he shall, within two months after finding such goods, and before using the same, to their injury, [procure an appraisal thereof, by a justice of the peace of his county] which appraisal shall be certified to by such justice, and filed in the office of the clerk of the board of county commissioners of such county.

SEC. 3268. If the owner of such lost money or goods appear within one year after notice given to the clerk as aforesaid, and shall make out his right thereto, he shall have restitution of the same, or the value thereof, upon his paying all the costs and charges thereon, including a reasonable compensation to the finder for his trouble.

SEC. 3269. If no owner shall appear within one year, then the finder of such lost money or goods shall pay one-half the value thereof, after deducting all legal charges, to the treasurer of the county, for school purposes; and in case such finder shall neglect to pay the same, on demand, after the expiration of the time aforesaid, the same may be sued for and recovered by the said treasurer, in the name of the county, for school purposes.

Sec. 3270. If any finder of lost money or goods, of the value of five dollars or upwards, shall neglect to give notice of the same, and otherwise to comply with the provisions of this chapter, he shall be liable for the full value of such money or goods, one-half to the use of the county for school purposes, and the other half to the person who shall sue for the same, and shall also be responsible to the owner for such lost money or goods.

## CHAPTER CCXLIX.

### THE ERECTION OF WHARVES.

Section
3271. Persons owning lands adjoining navigable waters, may build wharves and charge wharfage.
3272. County commissioners may authorize the erection of wharves at terminus of highway, etc., and fix rate of wharfage.
Section
3273. Rate of wharfage under preceding section must be posted in conspicuous place on said wharf.
3274 When wharves shall be deemed incomplete and unfinished.

Sec. 3271. Any person owning land adjoining any navigable waters or water course, within or bordering upon this territory, may erect upon his own land any wharf or wharves, and may extend them so far into said waters or water courses as the convenience of shipping may require; and he may charge for wharfage such rates as shall be reasonable: *Provided*, That he shall at all times leave sufficient room in the channel for the ordinary purposes of navigation.

Sec. 3272. Whenever any person shall be desirous of erecting upon his own land any wharf at the terminus of any public highway, or at any accustomed landing place, he may apply to the county commissioners of the proper county, who, if they shall be satisfied that the public convenience requires the said wharf, may authorize the same to be erected and kept up for any length of time not exceeding twenty years. And they shall annually prescribe the rates of wharfage and charges thereon, but there shall be no charge for the landing of passengers and their baggage.

Sec. 3273. Whenever any person or persons shall be desirous of erecting a wharf at the terminus of any street of any incorporated town or city in the territory, he or they may apply to the municipal authorities of such town or city who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and kept in repair for any length of time not exceeding ten years; and every person building, owning or occupying a wharf in this territory, upon which wharfage is charged and received, shall be held accountable to the owner or owners, consignees or agents, for any and all damage done to property stored upon, or passing over said wharf, in consequence of the unfinished, incomplete, or insufficient condition of said wharf; and every such person shall post or cause to be posted in a conspicuous place on said wharf the established rates of wharfage, noting passengers and their baggage free.

Sec. 3274. All wharves now standing, or hereafter to be built, in this territory, shall be deemed insufficient, incomplete and unfinished unless they have good and substantial banisters or railing on the sides thereof, or a strip of hewn timber at least eight by ten inches square, well secured all round said wharves within ten inches of the outer edge thereof, except at the ends.

## CHAPTER CCL.

### ATTORNEYS AND COUNSELLORS AT LAW.

SECTION
3275. Who may be admitted to practice.
3276. Application for admission, and proof thereon.
3277. Examination
3278. Order entitling him to admission.
3279. General duties of attorneys.
3280. Authority of an attorney.
3281. When an attorney appears without authority.
3282 Compelling to procure authority.
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3284. Notice of change.
SECTION
3285. Notice to appoint attorney.
3286. Lien of, for compensation.
3287. Proceedings to compel delivery of papers.
3288. Proceedings when attorney claims lien.
3289. Removal and suspension of.
3290. By whom proceedings may be instituted.
3291. How they shall be instituted
3292. Who may practice in courts of record.
3293. No judge or justice of the peace to act.
3294. Partner not to practice as attorney at law.

SEC. 3275. The following persons are entitled to practice as attorneys and counsellors in all the courts of this territory: (1.) All citizens of the United States who were duly admitted as attorneys and counsellors of the supreme or district courts, before the passage of this chapter, and whose names are still on the rolls of attorneys of those courts; (2.) All citizens of the United States who present to any court of record [in the territory a license from any court of record] in any other state or territory, showing that the person presenting the same has been duly admitted to practice in said court; (3.) All citizens of the United States who are over twenty-one years of age and who shall present to any court of record in this territory a diploma or certificate from a law college or law school, and are found upon examination under the direction of the court, to possess the requisite qualifications of learning and ability; (4.) All citizens of the United States over the age of twenty-one years, of good moral character, and who possess the requisite qualifications of learning and ability, and who shall be examined and admitted as hereinafter provided.

SEC. 3276. All citizens of the United States applying for admission to practice as attorneys and counsellors in this territory, except those provided for in the first, second and third clauses of the foregoing section, must apply to the supreme court or any district court of the territory, when in session, and must show: (1.) That they are of the age of twenty-one years, which proof may be made by their own affidavit; (2.) That they are persons of good moral character, which may be proved by certified or other evidence satisfactory to the court; (3.) That they have diligently studied the common law and the laws of this territory, for at least eighteen months previous to the date of their application, under the direction of some practicing attorney within the territory, and are well versed in said laws, the proof of which shall be the certificate of the attorney under whose direction the applicant has studied.

SEC. 3277. The applicant must also be examined as to his qualifications of learning and ability, by the judges or under their direction, at the term at which application is made.

SEC. 3278. If upon examination he be found duly qualified, the court must direct an order to be entered to the effect that the applicant is a citizen of the United States, of the age of twenty-one years, of good moral character, and possesses the requisite qualifications of learning and ability, to practice as an attorney and counsellor in all the courts of this territory, and upon the entry of the order, such applicant shall be entitled to practice as such attorney and counsellor.

Sec. 3279. It shall be the duty of an attorney and counsellor: (1.) To support the constitution of the United States and the laws of the territory; (2.) To maintain the respect due to the courts of justice and judicial officers; (3.) To counsel or maintain such actions, proceedings or defenses, only, as appear to him legal and just, except the defense of a person charged with a public offense; (4.) To employ for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judge by any artifice or false statement of fact or law; (5.) To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client; (6.) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged; (7.) Never to reject from any consideration personal to himself, the cause of the defenceless or oppressed.

Sec. 3280. An attorney and counsellor has authority: (1.) To bind his client in any of the proceedings in an action or special proceeding by his agreement duly made, or entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings in, an action or special proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him, or signed by the party against whom the same is alleged, or his attorney; (2.) To receive money claimed by his client in an action or special proceeding, during the pendency thereof, or after judgment upon the payment thereof, and not otherwise, to discharge the same or acknowledge satisfaction of the judgment; (3.) This section shall not prevent a party employing a new attorney or from issuing an execution upon a judgment, or from taking other proceedings prescribed by statute for its enforcement.

Sec. 3281. If it be alleged by a party for whom an attorney appears, that he does so without authority, the court may, at any stage of the proceedings, relieve the party for whom the attorney has assumed to appear from the consequences of his act; it may also summarily, upon motion, compel the attorney to repair the injury to either party consequent upon his assumption of authority.

Sec. 3282. The court, or a judge, may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear.

Sec. 3283. The attorney in an action or special proceeding, may be changed at any time before judgment or final determination as follows: (1.) Upon his own consent, filed with the clerk or entered upon the minutes; or (2.) Upon the order of the court, or a judge thereof, on the application of the client, or for other sufficient cause; but no such change can be made until the charges of such attorney have been paid by the party asking such change to be made.]

SEC. 3284. When an attorney is changed, as provided in the last section, written notice of the change, and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party; until then, he shall be bound to recognize the former attorney.

SEC. 3285. When an attorney dies, or is removed, or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney, must, at least twenty days before any further proceedings against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person.

SEC. 3286. An attorney has a lien for his compensation, whether specially agreed upon or implied, as hereinafter provided: (1.) Upon the papers of his client, which have come into his possession in the course of his professional employment; (2.) Upon money in his hands belonging to his client; (3.) Upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party; (4.) Upon a judgment to the extent of the value of any services performed by him in the action, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice.

SEC. 3287. When an attorney refuses to deliver over money or papers, to a person from or for whom he has received them in the course of professional employment, whether in an action or not, he may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, then by order of any judge of a court of record, to do so within a specified time, or show cause why he should not be punished for a contempt.

SEC. 3288. If, however, the attorney claim a lien, upon the money or papers, under the provisions of this chapter, the court or judge may: (1.) Impose as a condition of making the order, that the client give security in a form and amount to be directed, to satisfy the lien, when determined in an action; (2.) Summarily to inquire into the facts on which the claim of a lien is founded, and determine the same; or (3.) To refer it, and upon the report, determine the same as in other cases.

SEC. 3289. An attorney or counsellor may be removed or suspended by any court of record, at a regular term thereof, for either of the following causes, arising after his admission to practice: (1.) Upon his being convicted of felony, or of a misdemeanor involving moral turpitude, in either of which cases the record of his conviction is conclusive evidence; (2.) For a willful disobedience, or violation of the order of a court, requiring him to do, or forbear an act connected with, or in the course of his profession; (3.) For a willful violation of any of the provisions of section 3279.

SEC. 3290. The proceedings to remove or suspend an attorney and counsellor, as provided in the last section, must be taken by the court of its own motion for matter within its knowledge, or may be taken upon the information of another, and in either case the party shall have the privilege of making his defense.

Sec. 3291. Such proceedings shall be by motion and answer, and evidence may be examined on either side.

Sec. 3292. No person shall practice in any court of record except a party or his regularly authorized attorney and counsellor at law: *Provided*, That nothing herein contained shall be so construed as to prevent a party from employing any person to assist him in the preparation of his papers in the case before the time of trial, nor so as to prevent any person from trying any particular cause in court; leave of court being first had and obtained, and entered of record.

Sec. 3293. No district or probate judge, or justice of the peace, shall act as attorney, or counsellor, in a court of which he is judge, or in an action or proceeding removed therefrom to another county or in an action or proceeding from which an appeal may lie to his own court.

Sec. 3294. The law partner of any probate judge, or justice of the peace, in this territory, shall not practice as attorney or counsellor, in the court over which said judge or justice presides.

## CHAPTER CCLI.

### CONVICTS, BOOKS AND RELIGIOUS SERVICES FOR.

Section
3295. Who to provide books, etc., for.
3296. Religious services, how provided.
Section
3297. Ministers who may officiate.

Sec. 3295. The governor of said territory be and he is hereby authorized to purchase newspapers, magazines or books for the use of the convicts in the territorial penitentiary to the amount of fifty dollars annually and he is hereby authorized to purchase a number of volumes of the Sea Side and Franklin Square Library, to the amount of twenty-five dollars.

Sec. 3296. The governor is hereby further authorized to contract with any suitable or proper person or persons to visit the said penitentiary as often as twice a month to hold religious services and give such christian and moral advice and counsel as shall be suitable to their condition and necessities. The amount to be paid for such services to be not more than one hundred dollars annually. The territorial auditor is hereby authorized to draw warrants on the territorial treasurer for the amounts specified in the preceding sections, which shall be paid out of any money not otherwise appropriated.

Sec. 3297. Nothing in this act contained, shall be so construed as to exclude ministers of any denomination from giving gratuitous religious or moral instruction to the prisoners.

## CHAPTER CCLII.

### EXEMPTION OF FIREMEN FROM JURY AND OTHER DUTIES.

Section
3298. What firemen are exempt from service on juries.
3299. On proof of being a fireman, exempt from all poll tax.
Section
3300. Ceasing to be a fireman, exemption terminates.
3301. When a fire department is organized, its certificate necessary.

Sec. 3298. An active member of a duly organized fire, or hook and ladder company in this territory or one who has served as such in this territory for seven years continuously, prior to the passage of this act, and any one who is an active member of the fire department, of any city, town, or village shall not be required to serve on any jury should they elect to be excused from serving, and on such election they shall be excused by the court from serving as jurors.

Sec. 3299. Hereafter no capitation tax of any kind shall be levied, assessed or collected, on or from the persons mentioned in the preceding section: *Provided, however*, That the presumption shall be, that a person is not a member of a fire company or a fire department mentioned in said section until he shall satisfy the officer levying or who is collecting said tax of such fact by producing and showing to such officer a certificate to that effect, certified to by the presiding officer of the fire department to which he belongs, or certified to by the chief or other principal presiding officer of the company to which he belongs, but such certificate must be certified to within the year preceding: *Provided*, That if a person has served seven years, as herein provided, a certificate to that effect bearing any other date shall be sufficient.

Sec. 3300. Any person ceasing to be an active member of such company or failing to comply with the rules and regulations of such fire department or company shall forfeit his right to enjoy the privileges and benefits conferred by this chapter and it shall be his duty to surrender his certificate upon demand being made therefor by any proper authority.

Sec. 3301. When a fire department has been organized, the certificate mentioned in section 3299 of this chapter shall be provided by and issued by such department.

## CHAPTER CCLIII.

### DESCENT OF REAL ESTATE.

Section
3302. Rule and order of descent of real estate.
3303. Survivorship and descent of community property.
3304. Curtesy and dower abolished.
3305. Illegitimate child, when to inherit; bastard legitimatized by marriage of parents.
3306. Estate of illegitimate child to whom descend.
3307. Degrees of kindred computed by civil law.
3208. Advancement, how to be regarded.
3309. When advancement to exclude heir from further portion.
3310. Advancement, when made in real estate.
3311. Gifts and grants, when deemed advancements.
3312. Value of advancements, how established.
3313. Where deceased survived one to whom advancement made.
3314. The words "issue" and "real estate," defined.
3315. Right of representation defined; posthumous children.

Sec. 3302. When any person shall die seized of any lands, tenements or hereditaments, or any right thereto or entitled to any interest therein, in fee simple, or for the life of another, not having devised the same, they shall descend subject to the debts as follows:

First, If the decedent leaves a surviving husband or wife and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child by right of representation. If there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation.

Second, If the decedent leaves no issue, the estate goes in equal shares to the surviving husband or wife, and to the decedent's father and mother, if both survive. If there be no father nor mother, then one-half goes in equal shares to the brothers and sisters of the decedent and to the children of any deceased brothers or sisters, by right of representation. If decedent leaves no issue, nor husband, nor wife, the estate must go to his father and mother.

Third, If there be no issue, nor husband, nor wife, nor father and mother, nor either, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation.

Fourth, If the decedent leaves a surviving husband or wife and no issue, and no father nor mother, nor brother, nor sister the whole estate goes to the surviving husband or wife.

Fifth, If the decedent leaves no issue, nor husband, nor wife, and no father nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestor must be preferred to those claiming through an ancestor more remote, however.

Sixth, If the decedent leaves several children or one child and the issue of one or more other children, and any such surviving child dies under age, and not having been married, all the estate that comes to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

Seventh, If at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent, descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

Eighth, If the decedent leaves no husband, wife or kindred, the estate escheats to the territory, for the support of common schools, in the county in which the decedent resided during lifetime, or where the estate may be situated.

Sec. 3303. Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property, it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living or none of their representatives living, then the said community property shall all pass to the survivors, to the exclusion of collateral heirs, subject to the community debts, the family allowance and the charges and expenses of administration.

Sec. 3304. The provisions of section 3303, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents; and take the place of tenancy in dower and tenancy by curtesy, which are hereby abolished.

SEC. 3305. Every illegitimate child shall be considered as an heir to the person who shall in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as heir of his mother, and shall inherit his or her estate in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid, and adopted him into his family, in which case such child and the legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate, and without issue, the others shall inherit his estate and he theirs, as heretofore provided in like manner, as if all the children had been legitimate, saving to the father and mother respectively their rights in the estates of all the said children, as provided heretofore in like manner as if all had been legitimate.

SEC. 3306. If any illegitimate child shall die intestate without lawful issue, his estate shall descend to his mother, or in case of her decease, to her heirs at law.

SEC. 3307. The degree of kindred shall be computed according to the rules of the civil law, and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree..

SEC. 3308. Any estate, real or personal, that may have been given by the intestate in his lifetime as an advancement to any child or other lineal descent, shall be considered a part of the intestate's estate so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant, toward his share of the intestate's estate.

SEC. 3309. If the amount of such advancement there exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement, and if the amount so received shall be less than his share, he shall be entitled to so much more as will give him his full share of the estate of the deceased.

SEC. 3310. If any such advancement shall have been made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided, and if it be in personal estate, and if in either case it shall exceed the share of real or personal estate respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make the whole share equal to those of the other heirs who are in the same degree with him.

SEC. 3311. All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

SEC. 3312. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment by the party receiving it, it shall be considered of that value in the division and distribution of the estate, otherwise it shall be estimated at its value when given.

Sec. 3313. If any child or lineal descendant so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of estate, and the amount thereof shall be allowed accordingly by the represesentatives of the heir so advanced, as so much received towards their share of the estate in like manner as if the advancement had been made directly to them.

Sec. 3314. The word "issue," as used in this chapter includes all the lawful lineal descendants of the ancestor, and the words "real estate," include all lands, tenements, and hereditaments, and all rights thereto, and all interests therein possessed and claimed in fee simple, or for the life of a third person.

Sec. 3315. Inheritance or succession by right of representation takes place when the descendants of any deceased heir take the same share or right in the estate of another that their parent would have taken if living. Posthumous children are considered as living at the death of their parent.

## CHAPTER CCLIV.

### DISTRIBUTION OF PERSONAL ESTATE.

SECTION
3316. Order and rule of distribution of separate personal property.
SECTION
3317. How advancements are to be treated.

Sec. 3316. When any person shall die possessed of any separate personal estate, or of any right or interest therein not lawfully disposed of by his last will, the same shall be applied and distributed as follows: (1.) The widow, if any, shall be allowed all articles of her apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessaries for the use of herself and family under her care, as shall be allowed and ordered in pursuance of the provisions of any law; and this allowance shall be made as well when the widow receives the provision made for her in the will of her husband as when he dies intestate; (2.) The personal estate remaining after such allowance, shall be applied to the payment of the debts of the deceased, with the charges for the funeral and the settling of the estate; (3.) The residue, if any, of the personal estate, shall be distributed among the same persons as would be entitled to the real estate by this act, and in the same proportion as provided, excepting as herein further provided; (4.) If the intestate leave a husband and issue, the husband shall be entitled to one-half the residue; (5.) If there be no issue, the husband shall be entitled to the whole of the residue; (6.) If the intestate leave a widow and issue, the widow shall be entitled to one-half of said residue; (7.) If there be no issue the widow shall be entitled to the whole of the residue; (8.) If there be no husband, widow or kindred of the intestate, the said personal estate shall escheat to the territory, for the use of common schools in the particular county in which the intestate shall have resided at time of death.

Sec. 3317. If the intestate leave a widow and issue, and any relation have received an advancement from the intestate in his life time, the value of such advancement shall not be taken into consideration in computing the one-half part to be assigned to the widow, but she shall be entitled to the one-half part only of the said residue, after deducting the value of the advancement.

## CHAPTER CCLV.

### THE CODE.

SECTION
3319. Laws repealed by.
3320. Laws now in force.
3321. What be published in session laws.
3322. Who to prepare law for publication.
SECTION
3323. Who to certify to code.
3324. Appropriation for indexing.
3325. Acts which constitute the code.

SEC. 3319. All acts of a general nature, revised and amended, and reenacted at the 8th biennial, and the present extra session of the legislative assembly, so soon as such acts shall take effect, shall be taken and construed as repealing all prior laws relating to the same subject, but the provisions of the code so far as they are the same as those of prior laws shall be construed as continuations of such laws and not as new enactments.

SEC. 3320. All acts or parts of acts of a general nature, in force, at the commencement of the 8th biennial session of the legislative assembly, and not repealed shall be, and the same are hereby continued, in full force and effect, unless the same be repugnant to the act upon the same subject matter, passed or revised at the 8th biennial or present extra session of the legislature.

SEC. 3321. All acts for the appropriation of money, all memorials, and joint resolutions, all acts or parts of acts of a private, local, or temporary nature, or especially applicable to particular cities, towns, or counties, and all acts and provisions not hereinafter directed to be published in the code, shall be published by the secretary of the territory, as directed by law.

SEC. 3322. That John P. Judson be and he is hereby appointed to index the code, and to prepare the manuscript for publication, and he is hereby directed to proceed, with all haste, and within the shortest time possible, consistent with his duties, to collect, compile, arrange and classify the several acts originating in the 8th biennial and present extra session, and hereinafter particularly described as contemplated in this act, and for that purpose he shall have power to correct any error or mistake in numbering, or referring to the sections or parts of any act or law, as may be incorporated into this code, and whenever the word "chapter" occurs, the same may be changed, and the word "act" inserted *in lieu thereof* or *vice versa*. He may make divisions or sub-divisions of the law, and subjects to which they pertain, and use or employ such terms or expressions with which to designate such divisions as in his judgment will best facilitate reference thereto, but he shall in no case change, modify, or alter the law. He shall also prepare suitable head-notes, or catch words, to indicate briefly the subject matter of the several acts or sections, with a full and accurate index to the whole, which notes, references and catch-words shall be prepared from the certified copies of the laws passed, and when so prepared, the same shall be delivered to the secretary of the territory.

SEC. 3323. In preparing said acts for publication, the enacting clause, and the section declaring when the act takes effect, shall be omitted, and the sections shall be numbered, so that the sections shall be successive and uniform, and without omission, from the first to the close of the volume. If, in the preparation of said acts for publication, it becomes necessary to copy any act or acts, for the printer, the said John P. Judson is hereby authorized to employ one clerk to make such copies, at a compensation of five dollars per day: *Provided*, That said clerk shall not be employed for a longer period than ten days. The territorial auditor shall draw his warrant on the territorial treasurer, in favor of the person so employed as clerk upon presentation of the certificate of John P. Judson, showing the number of days said clerk was employed by him. As soon as any form of the code shall have been put in type, a proof sheet thereof shall be furnished to the secretary of the territory, who, together with John P. Judson, shall carefully examine the same, and make all corrections therein, and such proof sheet shall be carefully compared with the enrolled acts, and when such comparisons, and corrections are fully made, and said code is printed, the secretary of the territory and the said John P. Judson, shall certify that the same has been examined, and compared with such original acts, and that the same are true and correct copies thereof, as passed, and remaining in the office of the secretary of the territory, and that the code as thus published, and all laws therein contained, are true copies of the existing laws of Washington territory of a general nature, and they shall deposit a copy of said code so certified, in said secretary's office, which shall be *prima facie* evidence of such code. Such certificate shall be printed in each copy of the code, and every copy so printed, containing such certificate, may be used in evidence, without other or further proof, or authentication.

Sec. 3324. The sum of two hundred and fifty dollars be and the same is hereby appropriated to the said John P. Judson, for the services to be performed by him under the provisions of this act. And the territorial auditor is hereby directed to draw a warrant on the territorial treasurer for said sum, when the copy of the printed code is deposited in the office of the secretary of the territory, as provided in this act, and the territorial treasurer shall pay such warrant, out of any money in the treasury, not otherwise appropriated.

Sec. 3325. The following acts and laws shall constitute the code of Washington territory:

First. The constitution of the United States, and the amendments thereto.

Second. The provisions, acts of congress applicable to the territory of Washington.

Third. The Naturalization Laws.

Fourth. And all acts, revised and amended, or enacted, during the eighth biennial and present extra session of the legislative assembly, of a general nature.

## CHAPTER CCLVI.

### EXTENDING THE TIME WITHIN WHICH THE TAXES FOR THE YEAR 1881, MAY BE PAID.

Section
3326 Tax levy for 1881 not delinquent till February 28, 1882.
Sheriff as collector to follow act of November 14, 1879.
Section
3327. All proceedings to be as prescribed in revenue law of 1879. except as to dates.

Sec. 3326. The taxes levied for the year 1881 shall not become delinquent until 6 o'clock p. m., of the 28th day of February, 1882. From and after the first day of March, 1882, the sheriff shall be collector of said delinquent taxes for 1881. On the first Thursday of March, 1882, the county treasurer must attend at the office of the county auditor and perform the duty required by section 113 of "An act to provide for the assessing and collecting of county and territorial revenue, approved November 14, 1879." The sheriff as collector of delinquent taxes shall follow the provisions of said act, conforming to the changes of date and having until the third Monday of April, 1882, in which to enforce the collection of taxes by restraint of personal property. On the first Monday of June, 1882, the said sheriff as collector of delinquent taxes having made due advertisement as prescribed by said law, said sheriff changing only the dates to conform to this act, shall commence the sale at public auction of real estate upon which taxes were levied for the year 1881.

SEC. 3327. In other respects except as to the dates being altered as herein provided to secure an extension of time within which said taxes may be paid, the proceedings shall be as prescribed in the revenue law approved Nov. 14, 1879.

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SECRETARY'S OFFICE,
OLYMPIA, Washington Territory, May 24, 1882.

In compliance with the provisions of section five of the act of the legislative assembly, entitled "An act relating to the codification of the laws, and declaring what acts constitute the code," approved December 7th, 1881, we hereby certify that we have examined and compared all the laws embraced in this volume with the original rolls, and that the same are true and correct copies thereof as passed and remaining in the office of the Secretary of Washington Territory, and that all the laws contained in this volume are true copies of existing laws of a general nature, except where notes, or words in brackets or parentheses show changes or omissions.

Redundant matter is enclosed in parentheses, and matter omitted from the enrolled laws but supplied here, is enclosed in brackets.

N. H. OWINGS,
*Secretary of the Territory.*
JOHN P. JUDSON.

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